

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 vs.)
7 MICHAEL J. MISKE, JR.,)
8 Defendant.)
 _____)

9
10 TRANSCRIPT OF JURY TRIAL (DAY 21)
11 BEFORE THE HONORABLE DERRICK K. WATSON,
12 CHIEF UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

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24
25 Proceedings recorded by machine shorthand, transcript produced
 with computer-aided transcription (CAT).

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1 February 15, 2024 8:37 a.m.

08:37AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

08:37AM 3 States of America versus Defendant (01) Michael J. Miske, Jr.

08:37AM 4 This case has been called for jury trial, day 21.

08:37AM 5 Counsel, please make your appearances for the record.

08:37AM 6 MR. INCIONG: Good morning, Your Honor. Mark Inciong,

08:37AM 7 Michael Nammar and KeAupuni Akina for the United States. Also

08:37AM 8 present is our paralegal Kari Sherman and FBI Special Agent Tom

08:37AM 9 Palmer. Good morning.

08:37AM 10 THE COURT: Good morning.

08:37AM 11 MR. KENNEDY: Good morning, Your Honor. Michael

08:37AM 12 Kennedy with Lynn Panagakos, Michael Miske, Ashley King and

08:37AM 13 Josh Barry. Good morning.

08:37AM 14 THE COURT: Good morning to all of you as well. You

08:37AM 15 may be seated.

08:37AM 16 Good morning to the 17 persons on our jury.

08:37AM 17 February 15 is where we're at, the middle of the month. Is

08:37AM 18 that the ides -- does that make it the Ides of February? I

08:37AM 19 think so.

08:38AM 20 In any event, Mr. Inciong, the government should call

08:38AM 21 its next witness when you are ready.

08:38AM 22 MR. INCIONG: Thank you, Your Honor.

08:38AM 23 MR. NAMMAR: United States calls Ashlin Akau.

08:38AM 24 THE CLERK: Please raise your right hand.

08:38AM 25 ASHLIN AKAU,

08:38AM 1 called as a witness, having been first duly sworn, was examined
08:38AM 2 and testified as follows:

08:38AM 3 THE CLERK: Please state your full name, spelling your
08:38AM 4 last name for the record.

08:38AM 5 THE WITNESS: Ashlin Akau. A-S-H-L-I-N, A-K-A-U.

08:38AM 6 DIRECT EXAMINATION

08:38AM 7 BY MR. NAMMAR:

08:38AM 8 Q Good morning, Ms. Akau.

08:38AM 9 A Good morning.

08:38AM 10 Q Can you tell the jury how old you are?

08:38AM 11 A I'm 33.

08:38AM 12 Q And where did you grow up?

08:38AM 13 A In Kailua.

08:38AM 14 Q Are you married?

08:38AM 15 A No.

08:38AM 16 Q Are you divorced?

08:38AM 17 A Yes.

08:38AM 18 Q Who are you divorced from?

08:38AM 19 A Ramsey Scanlan.

08:39AM 20 Q Did you and Mr. Scanlan have any children together?

08:39AM 21 A Yes, we have one son.

08:39AM 22 Q And how old is that child now?

08:39AM 23 A He's eight now.

08:39AM 24 Q Is Mr. Scanlan in your child's life?

08:39AM 25 A No, he's not.

08:39AM 1 Q How far did you go in school?

08:39AM 2 A Some college.

08:39AM 3 Q Where did you go to some college?

08:39AM 4 A Windward Community College.

08:39AM 5 Q Did you graduate from high school?

08:39AM 6 A Yes, I did.

08:39AM 7 Q From where?

08:39AM 8 A Kailua High School.

08:39AM 9 Q What are you currently doing for work?

08:39AM 10 A I'm a certified laser specialist.

08:39AM 11 Q And what does it mean to be a certified laser specialist?

08:39AM 12 A I work in the aesthetic industry, so tattoo removal, hair

08:39AM 13 removal, skin resurfacing, things like that.

08:39AM 14 Q If you could remove the mic -- if you could move the mic

08:39AM 15 just a little bit closer to you.

08:39AM 16 A Okay.

08:39AM 17 Q Thank you. So what sorts of thing do you do on patients?

08:39AM 18 A Tattoo removal, hair removal, skin resurfacing, those

08:39AM 19 kinds of things.

08:39AM 20 Q Was there a process involved to become certified?

08:40AM 21 A Yes, I had to go to Rocky Mountain Laser College.

08:40AM 22 Q And where is that?

08:40AM 23 A In Colorado.

08:40AM 24 Q And how long have you had -- or where do you currently

08:40AM 25 work?

08:40AM 1 A At Asia Pacific Plastic Surgery.

08:40AM 2 Q How long have you been with that company?

08:40AM 3 A About five years.

08:40AM 4 Q How long have you been a certified laser specialist?

08:40AM 5 A About six years.

08:40AM 6 Q Have you had any other jobs in your career?

08:40AM 7 A Yes.

08:40AM 8 Q Tell us about those.

08:40AM 9 A I worked at Macy's in Kailua after high school, and I

08:40AM 10 worked for Elite Parking after high school.

08:40AM 11 Q Now, in 2021 did you plead guilty to a federal offense?

08:40AM 12 A Yes.

08:40AM 13 Q What was the offense you pled guilty to?

08:40AM 14 A The use of a chemical weapon.

08:40AM 15 Q Are you represented by attorneys in that case?

08:40AM 16 A Yes.

08:40AM 17 Q Who are you represented by?

08:40AM 18 A Michael Green and Lani Nakamura.

08:40AM 19 Q And as it relates to that particular case, are you

08:40AM 20 cooperating with the government?

08:41AM 21 A Yes.

08:41AM 22 Q Why are you cooperating?

08:41AM 23 A Because it's the right thing to do, and I feel like I

08:41AM 24 could get -- with the plea deal, I can lessen my sentence.

08:41AM 25 Q Have you been sentenced yet in that case?

08:41AM 1 A No. No, I have not.

08:41AM 2 Q Have you been promised what sentence you will receive?

08:41AM 3 A No, I have not.

08:41AM 4 Q What is your understanding about who will be sentencing
08:41AM 5 you in your criminal case?

08:41AM 6 A The judge.

08:41AM 7 Q Did you enter a plea agreement with the United States?

08:41AM 8 A Yes, I did.

08:41AM 9 Q Does that plea agreement say anything about robberies?

08:41AM 10 Robberies.

08:41AM 11 A Yes.

08:41AM 12 Q What does the plea agreement say about robberies?

08:41AM 13 A That I was involved in robberies.

08:41AM 14 Q Okay. Did that plea agreement require you to plead guilty
08:41AM 15 to robberies?

08:41AM 16 A Yes.

08:41AM 17 Q Okay. Have you in fact assisted others in committing
08:41AM 18 robberies?

08:41AM 19 A Yes, I have.

08:41AM 20 Q What kind of robberies?

08:41AM 21 A Robberies of drug dealers.

08:42AM 22 Q Now, you said that the plea agreement required you to
08:42AM 23 plead guilty due to robberies. Do you recall that the plea
08:42AM 24 agreement mentioned dismissing certain -- or not filing certain
08:42AM 25 charges against you?

08:42AM 1 A The robberies, I believe.

08:42AM 2 Q Okay. Would it refresh your recollection to look at a
08:42AM 3 particular provision of the plea agreement?

08:42AM 4 A Yeah. Yes.

08:42AM 5 MR. NAMMAR: Could we show the witness only 1-864,
08:43AM 6 which is from the original list, and go to page 3. Actually
08:43AM 7 start on page 2.

08:43AM 8 BY MR. NAMMAR:

08:43AM 9 Q If you could read the bottom part there starting with "In
08:43AM 10 return"?

08:43AM 11 A "In return" -- okay.

08:43AM 12 Q And then if you could go to the next page. Just look up
08:43AM 13 when you are done reading paragraph 4.

08:43AM 14 Okay. Did that refresh your memory about whether
08:43AM 15 charges of robberies weren't going to be filed against you
08:43AM 16 pursuant to the plea agreement?

08:43AM 17 A No, they weren't.

08:43AM 18 Q Okay. The plea agreement that -- the crime you pled
08:44AM 19 guilty to, what was that?

08:44AM 20 A The use of a chemical weapon.

08:44AM 21 Q Do you understand what the maximum penalty for that crime
08:44AM 22 is?

08:44AM 23 A Yes.

08:44AM 24 Q What is it?

08:44AM 25 A A life sentence.

08:44AM 1 Q And does the plea agreement provide -- require you to give
08:44AM 2 testimony?

08:44AM 3 A Yes.

08:44AM 4 Q And does it say anything about telling the truth?

08:44AM 5 A Yes, I should be truthful.

08:44AM 6 Q Switch gears now and I ask you about someone by the name
08:44AM 7 of Jacob Smith. Do you know who that is?

08:44AM 8 A Yes, I do.

08:44AM 9 Q How did you meet Mr. Smith?

08:44AM 10 A I met him through a mutual friend, Norman Akau.

08:44AM 11 Q Okay. And do you recall around when you first met him?

08:44AM 12 A I would say the beginning of June.

08:44AM 13 Q Of what year?

08:44AM 14 A 2016.

08:44AM 15 Q Okay. Did you become friends with Mr. Smith?

08:44AM 16 A Yes, I did.

08:44AM 17 Q Did you become romantically involved with him as well?

08:44AM 18 A Yes.

08:45AM 19 Q Now, these robberies that you have said you were a part
08:45AM 20 of, did Mr. Smith have anything to do with them?

08:45AM 21 A Yes.

08:45AM 22 Q How many robberies were you a part of with Mr. Smith?

08:45AM 23 A Two.

08:45AM 24 Q In what year did those occur?

08:45AM 25 A 2016 was the first one.

08:45AM 1 Q Okay. Why did you agree to help Mr. Smith?

08:45AM 2 A Because they were offering me basically protection and
08:45AM 3 money.

08:45AM 4 Q What was going on in your life then?

08:45AM 5 A I was going through a nasty divorce with my abusive
08:45AM 6 ex-husband.

08:45AM 7 Q Are you in a different place now?

08:45AM 8 A Very much so.

08:45AM 9 Q How so?

08:45AM 10 A I have a career. I live for my son. And, yeah, I'm doing
08:45AM 11 great.

08:45AM 12 Q Now, you said you were in a relationship with Mr. Smith.

08:45AM 13 Would you spend a fair amount of time with him in the years of
08:45AM 14 2016 and 2017?

08:45AM 15 A A little bit, yes.

08:45AM 16 Q Did you get to know the people that he would associate
08:46AM 17 with?

08:46AM 18 A Yes.

08:46AM 19 Q Who would you see him with the most?

08:46AM 20 A Lance Bermudez, Johnnie Stancil, Dae Han.

08:46AM 21 Q Do you know Dae Han's last name?

08:46AM 22 A Moon.

08:46AM 23 Q What was that? Sorry.

08:46AM 24 A Dae Han Moon.

08:46AM 25 Q Lance Bermudez, do you know whether he went by a nickname?

08:46AM 1 A Yes, they call him Hammah.

08:46AM 2 Q Do you know why he was called Hammah?

08:46AM 3 A No.

08:46AM 4 Q I want to direct your attention now to March of 2017.

08:46AM 5 Were you recruited to do something at a nightclub?

08:46AM 6 A Yes.

08:46AM 7 Q What nightclub?

08:46AM 8 A Ginza.

08:46AM 9 Q And what were recruited to do?

08:46AM 10 A To pour out pepper spray into the club.

08:46AM 11 Q What you thought was pepper spray?

08:46AM 12 A Yes.

08:46AM 13 Q Do actually know what the substance was that you poured

08:46AM 14 out?

08:46AM 15 A Now I do, yes.

08:47AM 16 Q Okay. Is that related to the crime that you pled guilty

08:47AM 17 to the chemical weapon charge?

08:47AM 18 A Yes.

08:47AM 19 Q Who recruited you to do this?

08:47AM 20 A Jake Smith.

08:47AM 21 Q Do you -- do you recall when this occurred?

08:47AM 22 A The beginning of March of 20- --

08:47AM 23 Q 2017?

08:47AM 24 A 2017, yeah.

08:47AM 25 Q Okay. Who asked you to do this?

08:47AM 1 A Jacob Smith.

08:47AM 2 Q Okay. What does he say when he asked you to do this?

08:47AM 3 A He said that Bro asked him to find a girl to help him pour
08:47AM 4 out the mace on the -- on the floor because of Ginza, because
08:47AM 5 the boys did it the night before.

08:47AM 6 Q Okay. You mentioned the word "Bro." Who is that?

08:47AM 7 A Mike Miske.

08:47AM 8 Q And how did you know he was referring to Mike Miske when
08:47AM 9 he said Bro?

08:47AM 10 A Because he told me.

08:47AM 11 Q Okay. And they said that he mentioned that he needed a
08:48AM 12 girl?

08:48AM 13 A Yes.

08:48AM 14 Q Did Mr. Smith explain why they needed a girl?

08:48AM 15 A Because he said the boys were getting stopped because they
08:48AM 16 did District the night before.

08:48AM 17 Q Okay. Did he say -- did you know what District was?

08:48AM 18 A A club.

08:48AM 19 Q Okay. And do you know what Ginza was?

08:48AM 20 A A club as well.

08:48AM 21 Q Okay. When they said the boys did District the night
08:48AM 22 before, did he mention which boys did it?

08:48AM 23 A He said Kaulana.

08:48AM 24 Q Did you know who Kaulana was?

08:48AM 25 A At the time, no.

08:48AM 1 Q Do you know who Kaulana is now?

08:48AM 2 A Yes.

08:48AM 3 Q Who is Kaulana?

08:48AM 4 A Kaulana Freitas. I believe that's Mike's cousin.

08:48AM 5 Q Now, you mentioned Michael Miske. Had you met him before?

08:48AM 6 A Yes.

08:48AM 7 Q Okay. If you saw Mr. Miske in the courtroom, could you

08:48AM 8 pick him out?

08:48AM 9 A Yes.

08:48AM 10 Q Do you see him in the courtroom?

08:48AM 11 A Yes.

08:48AM 12 Q Can you pick him out and describe an article of clothing

08:49AM 13 he's wearing?

08:49AM 14 A He's right behind you in the brown and black suit.

08:49AM 15 MR. NAMMAR: May the record reflect that the witness

08:49AM 16 identified the defendant Michael Miske?

08:49AM 17 THE COURT: Yes, the record should reflect the witness

08:49AM 18 Ms. Akau's identification of the defendant Mr. Miske.

08:49AM 19 BY MR. NAMMAR:

08:49AM 20 Q What, if anything, did you know about Mr. Smith's

08:49AM 21 relationship to Michael Miske?

08:49AM 22 A I knew that they were really close and Jake would

08:49AM 23 basically do whatever he said.

08:49AM 24 Q Did you know whether Mr. Smith worked for Mr. Miske?

08:49AM 25 A He told me he did, yes.

08:49AM 1 Q What kind of work would he tell you he did?

08:49AM 2 A Beat up people for money. Basically anything he asked him

08:49AM 3 to do.

08:49AM 4 Q Okay. Now, you mentioned beat people up. Mr. Smith, did

08:49AM 5 you know anything about his background in martial arts?

08:49AM 6 A Yes.

08:49AM 7 Q What did you know?

08:49AM 8 A His dad owned a martial arts facility that he grew up in.

08:50AM 9 Q Did you know where that was?

08:50AM 10 A In Kaneohe.

08:50AM 11 Q And do you know if Mr. Smith competed at all in martial

08:50AM 12 arts?

08:50AM 13 A I believe he did.

08:50AM 14 Q So you said you were recruited by Jacob Smith --

08:50AM 15 A Yes.

08:50AM 16 Q -- to pour out a chemical, you mentioned it was mace?

08:50AM 17 A Yes.

08:50AM 18 Q Did you know in fact it was mace?

08:50AM 19 A No, I did not.

08:50AM 20 Q Okay. Was an amount of money ever discussed?

08:50AM 21 A Yes.

08:50AM 22 Q What was the amount of money discussed?

08:50AM 23 A Jake said that Mike was going to giving him \$3,000 and

08:50AM 24 that he would split it with me.

08:50AM 25 Q And what were you supposed to do for that money?

08:50AM 1 A Just go into the club at a certain time and pour out the

08:50AM 2 mace.

08:50AM 3 Q Did you agree to do that?

08:50AM 4 A Yes.

08:50AM 5 Q Did you do that?

08:50AM 6 A Yes.

08:50AM 7 Q Did you ever get paid?

08:51AM 8 A No.

08:51AM 9 Q You mentioned it was Ginza. Can you tell the jury where

08:51AM 10 Ginza is?

08:51AM 11 A Ginza is near Ala Moana.

08:51AM 12 Q Did Mr. Smith ever say anything about why they wanted to

08:51AM 13 do this job --

08:51AM 14 A He said --

08:51AM 15 Q -- what the reason was?

08:51AM 16 A Yes, he said that he wanted everybody to go to a different

08:51AM 17 club at Restaurant Row, which was Mike's club.

08:51AM 18 Q Okay. And when you say "he," who did you believe that

08:51AM 19 was?

08:51AM 20 A Jake told me.

08:51AM 21 Q And you said Restaurant Row?

08:51AM 22 A Yes.

08:51AM 23 Q And you said Mike's club?

08:51AM 24 A Yes.

08:51AM 25 Q Did you know what Jake was referring to?

08:51AM 1 A Encore I believe the name of the club was.

08:51AM 2 Q Okay. Have you ever been there?

08:51AM 3 A No.

08:51AM 4 Q Do you know what Mike's relationship to that club was?

08:52AM 5 A I believe he was the owner.

08:52AM 6 MR. NAMMAR: Can we show the witness only

08:52AM 7 Exhibit 1-57, which is from the original list. I don't believe
08:52AM 8 it's in evidence.

08:52AM 9 THE COURT: Okay, go ahead.

08:52AM 10 BY MR. NAMMAR:

08:52AM 11 Q Do you recognize what's on the screen in front of you,
08:52AM 12 Ms. Akau?

08:52AM 13 A Yes.

08:52AM 14 Q What is it?

08:52AM 15 A It's a picture of Kaulana.

08:52AM 16 Q And is this an accurate picture of Kaulana?

08:52AM 17 A Yes.

08:52AM 18 MR. NAMMAR: Your Honor, I'd move to admit 1-57.

08:52AM 19 THE COURT: Any objection, Counsel?

08:52AM 20 MS. PANAGAKOS: No objection, Your Honor.

08:52AM 21 THE COURT: Without objection, Exhibit 1-57 is
08:52AM 22 admitted. And you may publish.

08:52AM 23 (Exhibit 1-57 was received in evidence.)

08:52AM 24 BY MR. NAMMAR:

08:52AM 25 Q 1-57 is up on the screen. Can you tell the jury what

08:52AM 1 we're looking at here? What are we looking at here?

08:53AM 2 A A picture of Kaulana.

08:53AM 3 Q Okay. And what was the relationship, if any, that you

08:53AM 4 were aware of to Michael Miske?

08:53AM 5 A I believe that they were cousins.

08:53AM 6 Q And is this the person that you had talked about doing

08:53AM 7 District on Friday night?

08:53AM 8 A Yes.

08:53AM 9 Q So you agreed to do it, and I want to talk to you about

08:53AM 10 what happens before you pour out the substance.

08:53AM 11 A Okay.

08:53AM 12 Q Did you meet up with Jake Smith?

08:53AM 13 A Yes, he picked me up.

08:53AM 14 Q Where did he pick you up?

08:53AM 15 A From my house.

08:53AM 16 Q And where was your house?

08:53AM 17 A In Kailua.

08:53AM 18 Q And where did you all go?

08:53AM 19 A We drove to Waimanalo.

08:53AM 20 Q Okay. If you recall, what was Mr. Smith driving?

08:53AM 21 A I'm honestly not too sure. I don't remember.

08:54AM 22 Q Okay. You said you went to Waimanalo?

08:54AM 23 A Yes.

08:54AM 24 Q For the members of the jury that are not from this island,

08:54AM 25 can you tell them where that is on this island?

08:54AM 1 A On the east side of Oahu.

08:54AM 2 Q And where did you go in Waimanalo?

08:54AM 3 A We went to Johnnie Stancil's house.

08:54AM 4 Q Who is Johnnie Stancil?

08:54AM 5 A Mike Miske's half-brother.

08:54AM 6 MR. NAMMAR: Can we show the witness now -- or can we
08:54AM 7 publish now 6-44, which is -- actually let's not publish it. I
08:54AM 8 don't think this is in, Your Honor. My apologies.

08:54AM 9 Can we show the witness 6-44, which is from the
08:54AM 10 original list?

08:54AM 11 THE COURT: Yes, you can. Go ahead.

08:54AM 12 BY MR. NAMMAR:

08:54AM 13 Q Do you recognize this map, Ms. Akau?

08:54AM 14 A Yes.

08:54AM 15 Q What is this map of?

08:54AM 16 A This map is of Waimanalo.

08:54AM 17 Q And does this map accurately reflect the area around
08:55AM 18 Mr. Stancil's house?

08:55AM 19 A Yes.

08:55AM 20 MR. NAMMAR: Your Honor, I would move to admit 6-44.

08:55AM 21 THE COURT: Any objection?

08:55AM 22 MS. PANAGAKOS: No objection.

08:55AM 23 THE COURT: Without objection, 6-44 is admitted. And,
08:55AM 24 yes, you may publish to the witness and to the jury.

08:55AM 25 (Exhibit 6-44 was received in evidence.)

08:55AM 1 BY MR. NAMMAR:

08:55AM 2 Q Okay. 6-44, now the jury can see it, Ms. Akau. This is
08:55AM 3 of Waimanalo?

08:55AM 4 A Yes.

08:55AM 5 Q Do you see Mr. Stancil's house on this map?

08:55AM 6 A Yes.

08:55AM 7 Q Where is it?

08:55AM 8 So you're circling where the red dot is?

08:55AM 9 A Yes.

08:55AM 10 Q Can you tell the jury what happened when you got to
08:55AM 11 Mr. Stancil's house with Mr. Smith?

08:55AM 12 A Mr. Smith got out of the car and went in the house, and I
08:55AM 13 stayed inside the car.

08:55AM 14 Q And how long was he in the house for?

08:55AM 15 A I would say about ten minutes.

08:55AM 16 Q Around what time of day was this, if you recall?

08:55AM 17 A It was evening time, I would say probably around 8:30,
08:56AM 18 9:00.

08:56AM 19 Q And does Mr. Smith eventually come out?

08:56AM 20 A Yes.

08:56AM 21 Q And what do you recall he had with him, if anything, when
08:56AM 22 he came out?

08:56AM 23 A He had a bag and in the bag was a McDonald's cup, an empty
08:56AM 24 McDonald's cup, and in the McDonald's cup was a little
08:56AM 25 Jagermeister bottle.

08:56AM 1 Q How many little Jagermeister bottles were in the
08:56AM 2 McDonald's cup, if you recall?

08:56AM 3 A There was two.

08:56AM 4 Q And when you say "little Jagermeister bottles," could you
08:56AM 5 maybe describe the size for people in the jury that they may
08:56AM 6 have seen elsewhere?

08:56AM 7 A Probably at the airplane -- on the airplane, those little
08:56AM 8 bottles that they give out there.

08:56AM 9 MR. NAMMAR: Can we show the witness now 6-79, which
08:56AM 10 is from the original list?

08:56AM 11 BY MR. NAMMAR:

08:57AM 12 Q Ms. Akau, do you recognize this photo?

08:57AM 13 A Yes.

08:57AM 14 Q And what is it of?

08:57AM 15 A The house that we stopped at before we went to town.

08:57AM 16 Q Mr. Stancil's house?

08:57AM 17 A Yes.

08:57AM 18 Q Is this an accurate picture of his house?

08:57AM 19 A Yes.

08:57AM 20 MR. NAMMAR: Your Honor, we move to admit 6-79.

08:57AM 21 THE COURT: Ms. Panagakos, any issue?

08:57AM 22 MS. PANAGAKOS: No objection.

08:57AM 23 THE COURT: All right. Without objection, 6-79 is
08:57AM 24 admitted. You may publish.

08:57AM 25 (Exhibit 6-79 was received in evidence.)

08:57AM 1 BY MR. NAMMAR:

08:57AM 2 Q So the jury can see 6-79. Tell them what's shown in this
08:57AM 3 photo.

08:57AM 4 A What's shown is Jonathan Stancil's house in Waimanalo.

08:57AM 5 Q And this is where Mr. Smith went in for around ten
08:57AM 6 minutes, I think you said, and came out with the two little
08:57AM 7 Jagermeister bottles; is that right?

08:57AM 8 A Correct.

08:57AM 9 Q What did you understand was in the Jagermeister bottles?

08:57AM 10 A I believe there was like mace or pepper spray.

08:57AM 11 Q Okay. And what form was it in? Was it in a liquid form?

08:58AM 12 A Yes, it was.

08:58AM 13 MR. NAMMAR: Can we show the witness now 6-26, which
08:58AM 14 is from our original list as well?

08:58AM 15 BY MR. NAMMAR:

08:58AM 16 Q Do you recognize, Ms. Akau, what's shown in this photo?

08:58AM 17 A Yes, I do. That's the Jagermeister bottle.

08:58AM 18 Q The one that Mr. Smith came out of the house with?

08:58AM 19 A Yes.

08:58AM 20 MS. PANAGAKOS: Objection. Lack of foundation.

08:58AM 21 THE COURT: Sustained.

08:58AM 22 BY MR. NAMMAR:

08:58AM 23 Q Does this look like the bottle that Mr. Smith came out of
08:58AM 24 the house with?

08:58AM 25 A Yes.

08:58AM 1 MS. PANAGAKOS: Objection. Lack of foundation.

08:58AM 2 THE COURT: Overruled. Go ahead.

08:58AM 3 BY MR. NAMMAR:

08:58AM 4 Q You can answer.

08:58AM 5 A Yes.

08:58AM 6 MR. NAMMAR: Move to admit 6-26, Your Honor.

08:58AM 7 THE COURT: Any objection?

08:58AM 8 MS. PANAGAKOS: Yes, Your Honor. Same objection.

08:58AM 9 THE COURT: All right. Same ruling. Objection is

08:59AM 10 overruled.

08:59AM 11 You may publish. The exhibit is admitted, that's

08:59AM 12 6-26.

08:59AM 13 (Exhibit 6-26 was received in evidence.)

08:59AM 14 BY MR. NAMMAR:

08:59AM 15 Q Okay. 6-26 is up on the screen. Can you tell the jury

08:59AM 16 what we're looking at here?

08:59AM 17 A That's the Jagermeister bottle that the mace or pepper

08:59AM 18 spray I thought was inside.

08:59AM 19 Q And is this the same bottle that you -- or same or similar

08:59AM 20 bottle -- well, how many did you say Mr. Smith came out with?

08:59AM 21 A Two.

08:59AM 22 Q Okay. And did you take one of those bottles into the

08:59AM 23 Ginza Nightclub?

08:59AM 24 A Yes.

08:59AM 25 Q And then poured that substance out that's in the bottle in

08:59AM 1 the Ginza Nightclub?

08:59AM 2 A Yes.

08:59AM 3 Q So once Mr. Smith comes back with the bottles in the

08:59AM 4 McDonald's cup, do you all leave Mr. Stancil's house?

08:59AM 5 A Yes.

08:59AM 6 Q And you're with Mr. Smith at this time?

09:00AM 7 A Yes, I am.

09:00AM 8 Q And where do you go?

09:00AM 9 A We drive to town.

09:00AM 10 Q And what do you do in town?

09:00AM 11 A We drive around, and then at one point we stopped and

09:00AM 12 parked in Ala Moana.

09:00AM 13 Q Okay. Before you get to Ala Moana, were you guys driving

09:00AM 14 around killing time?

09:00AM 15 A Yes.

09:00AM 16 Q Do you remember at that point when you were killing time

09:00AM 17 whether Jake was on the phone?

09:00AM 18 A Yes.

09:00AM 19 Q Do you remember what he was talking about?

09:00AM 20 A He basically told me that we had to do it at a certain

09:00AM 21 time.

09:00AM 22 Q Okay. When he was on the phone, could you hear the other

09:00AM 23 end of the conversation?

09:00AM 24 A No.

09:00AM 25 Q Even though you couldn't hear the other end of the

09:00AM 1 conversation, did you hear what Mr. Smith was talking about?

09:00AM 2 A Yes.

09:00AM 3 Q And could you ascertain from the other end of the

09:00AM 4 conversation, Mr. Smith's end, who Mr. Smith was talking to?

09:00AM 5 A Yes.

09:00AM 6 Q Who did you think he was talking to?

09:00AM 7 A To Mike.

09:00AM 8 Q Why did you think that?

09:00AM 9 A Because he told me that he's the one who ordered us to do

09:01AM 10 that.

09:01AM 11 Q And were there any details about the job being discussed

09:01AM 12 during this phone conversation that Jacob Smith had with

09:01AM 13 Michael Miske?

09:01AM 14 A That he wanted us to do it at a certain time, like around

09:01AM 15 12:00 or 12:30 when the club was busy.

09:01AM 16 Q You said -- you told us that you eventually ended up in

09:01AM 17 Ala Moana Center?

09:01AM 18 A Yes.

09:01AM 19 Q Do you recall where you went in Ala Moana Center?

09:01AM 20 A We parked kind of near the bus stop across District.

09:01AM 21 Q Okay. And for the folks that are not from this island,

09:01AM 22 what is Ala Moana Center?

09:01AM 23 A It's the shopping mall.

09:01AM 24 Q Okay. What happened when you parked kind of across from

09:01AM 25 the District?

09:01AM 1 A Jake got out of the car and jumped into a blue Lexus.

09:01AM 2 Q Okay. Did you see who the other person was in the blue

09:01AM 3 Lexus?

09:01AM 4 A It was Mike.

09:01AM 5 Q Okay. And -- Michael Miske?

09:01AM 6 A Yes.

09:01AM 7 Q And the blue Lexus, was it an SUV or sedan?

09:01AM 8 A Sedan, I believe.

09:02AM 9 Q You stayed in Mr. Smith's car?

09:02AM 10 A Yes.

09:02AM 11 Q And Mr. Smith leaves with Mr. Miske?

09:02AM 12 A Yes.

09:02AM 13 Q How long are they gone for?

09:02AM 14 A I would probably say about ten minutes.

09:02AM 15 MR. NAMMAR: May we publish 6-46, which is already in
09:02AM 16 evidence? 6-46.

09:02AM 17 THE COURT: Go ahead.

09:02AM 18 BY MR. NAMMAR:

09:02AM 19 Q Do you recognize this map, Ms. Akau?

09:02AM 20 A Yes.

09:02AM 21 Q Okay. Could you put an X by the place that you recall
09:02AM 22 parking at the Ala Moana Center.

09:02AM 23 So for the record, that is the mauka side or the
09:02AM 24 mountain side of the mall.

09:02AM 25 And you mentioned District. Do you see where that is

09:03AM 1 on this map?

09:03AM 2 A Yes, I do.

09:03AM 3 Q Okay. Ginza, was it in close proximity of where you were

09:03AM 4 parked, if you know?

09:03AM 5 A It was right down the road.

09:03AM 6 Q Can you put an X on where you believed Ginza was?

09:03AM 7 A (Complying.)

09:03AM 8 Q Okay. So you told us that Mr. Smith and Mr. Miske were

09:03AM 9 gone for about ten minutes; is that right?

09:03AM 10 A Correct.

09:03AM 11 Q Do you see them return?

09:03AM 12 A Yes.

09:03AM 13 Q Do you see Mr. Miske return?

09:03AM 14 A Yes.

09:03AM 15 Q And what does Mr. Smith do when he returns?

09:03AM 16 A He just jumps out of the car and comes back in the car.

09:03AM 17 Q And when he comes back in the car, does he say anything to

09:03AM 18 you?

09:03AM 19 A Yes. He said that Mike Miske just wanted to make sure I

09:04AM 20 was good and that we were going to do it.

09:04AM 21 Q And what did you interpret "I was good" to mean?

09:04AM 22 A That I was going to do it and that I wasn't

09:04AM 23 second-guessing it basically.

09:04AM 24 Q Where do you all go? Where do you and Mr. Smith go from

09:04AM 25 there?

09:04AM 1 A I believe we still killed time until about 12:00.

09:04AM 2 Q And what happens at about 12:00 or midnight?

09:04AM 3 A He drops me off by Ginza.

09:04AM 4 Q And do you go inside Ginza?

09:04AM 5 A Yes.

09:04AM 6 Q The Jager bottle that we talked about, did you take that
09:04AM 7 with you?

09:04AM 8 A Yes, I did.

09:04AM 9 Q How many bottles?

09:04AM 10 A Just one.

09:04AM 11 Q And where, if anything, did you put -- where did you put
09:04AM 12 that bottle when you went --

09:04AM 13 A I put it in my top, so kind of like my bra area.

09:04AM 14 Q Why did you do that?

09:04AM 15 A Because that's the only place I felt like I could hide it.

09:04AM 16 Q Okay. And what did you do when you got into the club?

09:04AM 17 A Well, it wasn't exactly 12:30 and it wasn't too packed
09:05AM 18 yet, so I was instructed to wait.

09:05AM 19 Q Okay. When you were inside the club, did you communicate
09:05AM 20 with anybody outside the club?

09:05AM 21 A Yes.

09:05AM 22 Q Who did you communicate with?

09:05AM 23 A Jake.

09:05AM 24 Q Jacob Smith?

09:05AM 25 A Yes.

09:05AM 1 Q And what were you communicating about?

09:05AM 2 A He was just telling me when to do it and just wait till it
09:05AM 3 was busy, the club was busy.

09:05AM 4 Q And did you wait till it was busy?

09:05AM 5 A Yes, I did.

09:05AM 6 Q Now, you told us that you had poured it out. When you
09:05AM 7 poured it out, was the club -- poured out the substance that
09:05AM 8 you thought was mace, was the club full of people?

09:05AM 9 A There was a decent amount of people, yes.

09:05AM 10 Q Where did you pour it out?

09:05AM 11 A On the dance floor.

09:05AM 12 Q Okay. Right before you poured it out, where were you, if
09:05AM 13 you recall?

09:05AM 14 A I went to the bathroom.

09:05AM 15 Q Okay. And if you recall, in the club Ginza where was the
09:06AM 16 bathroom located, near the entrance or in the back?

09:06AM 17 A I believe it was in the middle of the entrance and the
09:06AM 18 dance floor.

09:06AM 19 Q Okay. So you come out of the bathroom and you pour it
09:06AM 20 out?

09:06AM 21 A Yes.

09:06AM 22 Q Where do you pour it out?

09:06AM 23 A On the dance floor.

09:06AM 24 Q Did you pour everything out in the bottle?

09:06AM 25 A Yes.

09:06AM 1 Q And what did you do with the bottle after you poured it
09:06AM 2 out?

09:06AM 3 A I put it back in my top.

09:06AM 4 Q Okay. What, if anything, did you notice after you poured
09:06AM 5 out the substance in the Jager bottle?

09:06AM 6 A While I was walking out people were coming out as well,
09:06AM 7 rushing out.

09:06AM 8 Q Rushing out?

09:06AM 9 A Yes.

09:06AM 10 Q And did you notice any effects after you had poured out
09:06AM 11 the substance in the Jager bottle?

09:06AM 12 A Yes. My eyes were watering. My skin was irritated and
09:06AM 13 burnt a little bit. I was coughing.

09:07AM 14 Q Was it difficult to breathe?

09:07AM 15 A Yes.

09:07AM 16 Q Did you notice anything where you had put the bottle back
09:07AM 17 into your shirt?

09:07AM 18 A Yes, that it was burnt.

09:07AM 19 Q Did you stick around to see the aftermath from what you
09:07AM 20 poured out at Ginza?

09:07AM 21 A No.

09:07AM 22 Q How -- where did you go?

09:07AM 23 A Jake picked me up and then we drove to Restaurant Row.

09:07AM 24 Q What, if anything, were you feeling when you got in
09:07AM 25 Mr. Smith's car? Were you feeling any effects?

09:07AM 1 A Yes. My -- my eyes were watering. I was coughing. I
09:07AM 2 didn't feel good at all.

09:07AM 3 Q Did Mr. Smith, did he appear to you to have any of the
09:07AM 4 same effects?

09:07AM 5 A Yes, he did. He was coughing as well as soon as I got in
09:07AM 6 the car.

09:07AM 7 Q What did -- what did you do with the bottle?

09:07AM 8 A I threw it out the window.

09:08AM 9 MR. NAMMAR: Your Honor, could we publish 6-48A, which
09:08AM 10 was admitted I believe yesterday?

09:08AM 11 THE COURT: Yes.

09:08AM 12 BY MR. NAMMAR:

09:08AM 13 Q Ms. Akau, 6-48A is up on the screen. Do you recognize
09:08AM 14 this photo?

09:08AM 15 A Yes.

09:08AM 16 Q What is shown here?

09:08AM 17 A That's where Ginza was.

09:08AM 18 Q And do you recall where Mr. Smith picked you up in the
09:08AM 19 vicinity to the Ginza Nightclub?

09:08AM 20 A Right on the side of the Ginza Nightclub.

09:08AM 21 Q So after Ms. Smith -- after Mr. Smith picks you up, you
09:08AM 22 say you were experiencing the symptoms in the car, you throw
09:08AM 23 out the bottle, where do you guys go?

09:08AM 24 A We went to Restaurant Row.

09:08AM 25 Q And why did you go there?

09:08AM 1 A Because Jake wanted to make sure there was no retaliation
09:08AM 2 from Ginza.
09:08AM 3 Q What happens when you get to Restaurant Row?
09:09AM 4 A We parked the car.
09:09AM 5 Q Where did you park the car?
09:09AM 6 A Kind of like a side parking area.
09:09AM 7 Q And where does Mr. Smith go, if anywhere, when you park
09:09AM 8 the car?
09:09AM 9 A He went inside to the club.
09:09AM 10 Q And where -- what did you do?
09:09AM 11 A Just stayed in the car.
09:09AM 12 Q Okay. When you say he went inside to the club, where did
09:09AM 13 he go?
09:09AM 14 A He did.
09:09AM 15 Q At which club?
09:09AM 16 A Encore.
09:09AM 17 Q Okay.
09:09AM 18 MR. NAMMAR: And can we show the witness 1-880, which
09:09AM 19 is from the original list?
09:09AM 20 BY MR. NAMMAR:
09:09AM 21 Q Do you recognize this photo, Ms. Akau?
09:09AM 22 A Yes.
09:09AM 23 Q What is it?
09:09AM 24 A That's the area that we parked.
09:09AM 25 Q The area you parked near the Encore club?

09:09AM 1 A Yes.

09:09AM 2 Q Is this an accurate picture of that area?

09:09AM 3 A Yes.

09:10AM 4 MR. NAMMAR: Your Honor, I'd move to admit 1-880.

09:10AM 5 THE COURT: Any issue, Ms. Panagakos?

09:10AM 6 MS. PANAGAKOS: No, no objection.

09:10AM 7 THE COURT: All right. Without objection,

09:10AM 8 Exhibit 1-880 is admitted. You may publish.

09:10AM 9 (Exhibit 1-880 was received in evidence.)

09:10AM 10 BY MR. NAMMAR:

09:10AM 11 Q Okay, Ms. Akau, the jury can see 1-880. Is this the area
09:10AM 12 where you recall Mr. Smith parking after the Ginza Nightclub?

09:10AM 13 A Yes.

09:10AM 14 Q Where he left you and went inside the club?

09:10AM 15 A Yes.

09:10AM 16 Q Were you still feeling any effects when Mr. Smith was in
09:10AM 17 the Encore Nightclub?

09:10AM 18 A Yes, I was.

09:10AM 19 Q What kind of effects?

09:10AM 20 A Same as I described previous, so coughing, the inside of
09:10AM 21 my top was burning, my eyes were watering.

09:10AM 22 Q How long is Mr. Smith gone for?

09:10AM 23 A I'd say at least 15 minutes.

09:10AM 24 Q And does he eventually return?

09:10AM 25 A Yes.

09:10AM 1 Q And when he returns, is there a discussion about any more
09:11AM 2 crime?
09:11AM 3 A Yes.
09:11AM 4 Q By who?
09:11AM 5 A By Jake.
09:11AM 6 Q What does he say?
09:11AM 7 A He asks if we wanted to do another one.
09:11AM 8 Q Another what?
09:11AM 9 A To go hit the other club the same as we did Ginza, so
09:11AM 10 District.
09:11AM 11 Q And what was your response?
09:11AM 12 A No.
09:11AM 13 Q If you know, what -- the second bottle, you mentioned
09:11AM 14 there was two that were picked up, right?
09:11AM 15 A Yes.
09:11AM 16 Q Okay. So you took one into Ginza?
09:11AM 17 A Right.
09:11AM 18 Q If you know, did Mr. Smith still have the second bottle?
09:11AM 19 A I believe he did.
09:11AM 20 Q When Mr. Smith came back, did the subject of a traffic
09:11AM 21 stop come up?
09:11AM 22 A Yes.
09:11AM 23 Q What did Mr. Smith say?
09:11AM 24 A He said that Mike Miske got stopped driving past Ginza.
09:11AM 25 Q And did he say anything about a search?

09:11AM 1 A He said that they searched his car and they didn't find
09:11AM 2 anything.

09:11AM 3 Q They searched Mr. Miske's car?

09:11AM 4 A Yes, correct.

09:11AM 5 Q And didn't find anything?

09:11AM 6 A Yes.

09:12AM 7 Q You mentioned you had burns. Did those -- where were
09:12AM 8 those burns?

09:12AM 9 A In like on the side of my chest.

09:12AM 10 Q And how long did they last?

09:12AM 11 A I would say a few months.

09:12AM 12 Q Were they painful?

09:12AM 13 A Yes.

09:12AM 14 Q And was -- where you had the burns, was that the area
09:12AM 15 where you had put the bottle?

09:12AM 16 A Yes.

09:12AM 17 Q After you poured it out?

09:12AM 18 A Yes.

09:12AM 19 Q Now, before you poured out the substance in the club that
09:12AM 20 you thought was mace, you told us you didn't know exactly what
09:12AM 21 it was.

09:12AM 22 A Correct.

09:12AM 23 Q Were you ever told at any time that the substance you
09:12AM 24 poured out was meant to be used for termite fumigations?

09:12AM 25 A No.

09:12AM 1 Q If you were told that, would you have poured it out in the
09:12AM 2 Ginza?

09:12AM 3 A Absolutely not.

09:12AM 4 MS. PANAGAKOS: Objection.

09:12AM 5 THE COURT: Sustained.

09:12AM 6 MR. NAMMAR: Can we show the witness 6-29? Which is
09:13AM 7 from the original list and not in evidence yet.

09:13AM 8 THE COURT: Go ahead.

09:13AM 9 BY MR. NAMMAR:

09:13AM 10 Q Do you recognize what's shown here, Ms. Akau?

09:13AM 11 A Yes, that's Jacob Smith's bag.

09:13AM 12 Q And how can you recognize it as Mr. Smith's bag?

09:13AM 13 A Because he always had it with him.

09:13AM 14 Q Is this an accurate depiction of you -- of what you recall
09:13AM 15 the bag that Mr. Smith always had with him?

09:13AM 16 A Yes.

09:13AM 17 MR. NAMMAR: Your Honor, I'd move to admit 6-29.

09:13AM 18 THE COURT: Any objection?

09:13AM 19 MS. PANAGAKOS: No objection.

09:13AM 20 THE COURT: Without objection, 6-29 is admitted. You
09:13AM 21 may show it to the jury.

09:13AM 22 (Exhibit 6-29 was received in evidence.)

09:13AM 23 BY MR. NAMMAR:

09:13AM 24 Q 6-29 is on the screen. What are we looking at here?

09:13AM 25 A That's Jacob Smith's Gucci bag.

09:13AM 1 Q Okay. And you said Mr. Smith would always have it with
09:13AM 2 him?

09:13AM 3 A Yes.

09:13AM 4 Q Did you ever see what kind of things he kept in his bag?

09:13AM 5 A Sometimes.

09:13AM 6 Q What would you see?

09:14AM 7 A Money. Occasionally a gun.

09:14AM 8 Q What brand was this?

09:14AM 9 A Gucci.

09:14AM 10 Q Okay. I want to switch gears now --

09:14AM 11 MR. NAMMAR: You can take that down.

09:14AM 12 BY MR. NAMMAR:

09:14AM 13 Q -- and ask you if you heard of someone named Nico?

09:14AM 14 A Yes.

09:14AM 15 Q How so?

09:14AM 16 A He was supplying drugs to my ex-husband.

09:14AM 17 Q And who was your ex-husband again?

09:14AM 18 A Ramsey Scanlan.

09:14AM 19 Q Did you know Nico's last name?

09:14AM 20 A No.

09:14AM 21 Q Did you help rob -- help others rob Nico?

09:14AM 22 A Yes.

09:14AM 23 MS. PANAGAKOS: Your Honor, I have a relevance
09:14AM 24 objection. I believe that this line of questioning is relevant
09:14AM 25 for impeachment, but not as a racketeering act for the alleged

09:14AM 1 enterprise charge in the indictment or -- and that it's

09:15AM 2 irrelevant to the alleged enterprise's affairs.

09:15AM 3 MR. NAMMAR: This is a racketeering act.

09:15AM 4 THE COURT: The objection -- this is the same

09:15AM 5 objection I think that has been voiced pretrial. The objection

09:15AM 6 is overruled.

09:15AM 7 Go ahead.

09:15AM 8 BY MR. NAMMAR:

09:15AM 9 Q So, Ms. Akau, you were saying -- I think the last question

09:15AM 10 was did you assist in robbing Nico?

09:15AM 11 A Yes, I did.

09:15AM 12 Q And how did you assist?

09:15AM 13 A I at least set him up.

09:15AM 14 Q And what was -- what was the purpose of the robbery? What

09:15AM 15 were you trying with others to obtain?

09:15AM 16 A His drugs.

09:15AM 17 Q What kind of drugs, if you know?

09:15AM 18 A Ice.

09:15AM 19 Q Who also took part in the robbery of Nico?

09:15AM 20 A Norman Akau, Harry Kauhi, Jonathan Santos, Jake Smith,

09:15AM 21 Lance Bermudez, Kurt Kipapa.

09:15AM 22 Q Could you recognize those -- all those folks you just

09:15AM 23 named off if you saw their photos again?

09:15AM 24 A Yes.

09:16AM 25 MR. NAMMAR: Your Honor, can we show the witness now

09:16AM 1 1-58, which is from our original list which is not in evidence?

09:16AM 2 THE COURT: Go ahead.

09:16AM 3 BY MR. NAMMAR:

09:16AM 4 Q Do you recognize 1-58?

09:16AM 5 A Yes, that's Johnnie Stancil.

09:16AM 6 Q And is it an accurate depiction -- accurate picture of

09:16AM 7 Johnnie Stancil as you remember him?

09:16AM 8 A Yes.

09:16AM 9 MR. NAMMAR: Your Honor, I'd move to admit 1-58.

09:16AM 10 THE COURT: Any objection?

09:16AM 11 MS. PANAGAKOS: No objection, Your Honor.

09:16AM 12 THE COURT: 1-58 is admitted without objection. You

09:16AM 13 may publish.

09:16AM 14 (Exhibit 1-58 was received in evidence.)

09:16AM 15 BY MR. NAMMAR:

09:16AM 16 Q The jury can see 1-58. Who is shown here?

09:16AM 17 A Jonathan Stancil.

09:16AM 18 Q And is that a tattoo on his neck?

09:16AM 19 A Yes.

09:16AM 20 Q Do you recall seeing Mr. Stancil with that same tattoo?

09:16AM 21 A Yes.

09:16AM 22 MR. NAMMAR: Can we show the witness now, Your Honor,

09:16AM 23 1-41, which is already in evidence?

09:17AM 24 THE COURT: Yes.

09:17AM 25 BY MR. NAMMAR:

09:17AM 1 Q And before we get to 1-41, Mr. Stancil, do you know
09:17AM 2 whether -- was he one of the people you told us that Mr. Smith
09:17AM 3 frequently associated with?
09:17AM 4 A Yes.
09:17AM 5 MR. NAMMAR: Can we publish 1-41, Your Honor?
09:17AM 6 THE COURT: You may.
09:17AM 7 BY MR. NAMMAR:
09:17AM 8 Q 1-41 is up on the screen. Who is this a photo of?
09:17AM 9 A Jacob Smith.
09:17AM 10 MR. NAMMAR: Can we publish now 1-34, Your Honor,
09:17AM 11 which is are already in evidence?
09:17AM 12 THE COURT: Yes.
09:17AM 13 BY MR. NAMMAR:
09:17AM 14 Q 1-34 is on the screen, Ms. Akau. What is this -- who is
09:17AM 15 this a picture of?
09:17AM 16 A Lance Bermudez.
09:17AM 17 Q And what was his nickname?
09:17AM 18 A Hammah.
09:17AM 19 Q And was Lance Bermudez one of the people that you told us
09:17AM 20 that Mr. Smith was one of his close associates?
09:17AM 21 A Yes.
09:18AM 22 MR. NAMMAR: Can we publish 1-61, which is already in
09:18AM 23 evidence?
09:18AM 24 THE COURT: Yes.
09:18AM 25 BY MR. NAMMAR:

09:18AM 1 Q Do you recognize who is shown in this photo?

09:18AM 2 A Yes, that's Harry Kauhi.

09:18AM 3 MR. NAMMAR: And can we also publish, Your Honor,

09:18AM 4 1-33, which is already in evidence?

09:18AM 5 THE COURT: Yes.

09:18AM 6 BY MR. NAMMAR:

09:18AM 7 Q Do you recognize who's shown in this photo?

09:18AM 8 A Yes, that's Norman Akau.

09:18AM 9 Q And you have the same last name as Mr. Akau?

09:18AM 10 A Yes.

09:18AM 11 Q Do you know if you're related to him?

09:18AM 12 A We are.

09:18AM 13 Q How so?

09:18AM 14 A My dad and him are cousins.

09:18AM 15 MR. NAMMAR: Your Honor, can we use the face board and

09:18AM 16 put those same photos on the face board?

09:18AM 17 THE COURT: Yes.

09:19AM 18 MS. PANAGAKOS: No objection.

09:19AM 19 BY MR. NAMMAR:

09:19AM 20 Q So you mentioned Nico. You knew Nico through your husband

09:19AM 21 Ramsey Scanlan?

09:19AM 22 A Yes.

09:19AM 23 Q What was the connection between the two?

09:19AM 24 A They were friends, and Nico was supplying Ramsey with ice.

09:19AM 25 Q Do you recall who spoke to you first about the Nico

09:19AM 1 robbery?

09:19AM 2 A Yes.

09:19AM 3 Q Who?

09:19AM 4 A Norman Akau.

09:19AM 5 Q And do you recall where that conversation happened?

09:19AM 6 A Yes, outside of The Shack in Kailua, which is a bar.

09:19AM 7 Q Was there anything about your appearance that was
09:20AM 8 referenced during that conversation?

09:20AM 9 A Yes, I had a black eye from my ex-husband.

09:20AM 10 Q And did that have anything to do with why they approached
09:20AM 11 you?

09:20AM 12 A I believe so.

09:20AM 13 Q Why?

09:20AM 14 A They offered me protection. They offered me money because
09:20AM 15 they knew I was in a bad spot.

09:20AM 16 Q Okay. Norman Akau, what did he -- what did he offer you
09:20AM 17 to do with respect to Nico?

09:20AM 18 A Money and protection.

09:20AM 19 Q And did you all discuss a plan?

09:20AM 20 A Yes.

09:20AM 21 Q What was the plan?

09:20AM 22 A That I was going to get Nico to grab the drugs, and that
09:20AM 23 they were going to rob him.

09:20AM 24 Q Okay. Did you agree to do that?

09:20AM 25 A Yes.

09:20AM 1 Q And how were you going to get Nico to grab the drugs?

09:20AM 2 A Ask him.

09:20AM 3 Q And what were you supposed to do once -- if you recall,

09:20AM 4 once Nico had the drugs?

09:20AM 5 A Call them.

09:20AM 6 Q Call who?

09:20AM 7 A Norman.

09:20AM 8 Q Okay. And did you know what the plan was going to be at

09:20AM 9 that point?

09:20AM 10 A No.

09:21AM 11 Q Okay. So in furtherance of that agreement and that plan,

09:21AM 12 did you end up reaching out to Nico?

09:21AM 13 A Yes.

09:21AM 14 Q And what -- tell us what you told Nico.

09:21AM 15 A That I had somebody that wanted to buy 5 pounds of ice.

09:21AM 16 Q Okay. And did you end up meeting up with Nico?

09:21AM 17 A Yes.

09:21AM 18 Q Where did you meet up -- meet up with him?

09:21AM 19 A I picked him up at The Shack Kailua, which is a bar.

09:21AM 20 Q And do you recall where you went?

09:21AM 21 A We went -- we drove to town to his apartment building.

09:21AM 22 Q What area of town was that in?

09:21AM 23 A Kind of like Kalihi by the 21 Mart.

09:21AM 24 Q Okay. Did you know why you were going to his apartment?

09:21AM 25 A To go grab the drugs.

09:21AM 1 Q And did Nico go up and grab drugs?

09:21AM 2 A Yes.

09:21AM 3 Q And when he came back, did you believe he had drugs?

09:21AM 4 A Yes, he did.

09:21AM 5 Q And what, if anything, did you do when you believed he had

09:21AM 6 drugs?

09:21AM 7 A I told him to put it in the trunk.

09:21AM 8 Q What happened next?

09:21AM 9 A As we were leaving his apartment parking lot area, we got

09:22AM 10 blocked off by two cars.

09:22AM 11 Q Okay. And what do you recall happening after you got

09:22AM 12 blocked off by -- well, first of all, do you remember the

09:22AM 13 description of the cars?

09:22AM 14 A I remember one was a black Altima. The other one I -- I

09:22AM 15 don't recall.

09:22AM 16 Q And what are you remembering -- what do you remember after

09:22AM 17 you were blocked off by those two vehicles?

09:22AM 18 A Norman Akau jumped out of the front car, the Altima, came

09:22AM 19 towards the passenger side of my car, and he had a police badge

09:22AM 20 and a walkie talkie.

09:22AM 21 Q What time frame do you remember this was?

09:22AM 22 A It was afternoon, I believe.

09:22AM 23 Q And what about what -- was this in 2016?

09:22AM 24 A Yes.

09:22AM 25 Q Around what time of year?

09:22AM 1 A The beginning of June.

09:22AM 2 Q Okay. What's the first thing that you recall -- you
09:22AM 3 mentioned a walkie talkie. What's the first thing you recall
09:22AM 4 during the robbery?

09:22AM 5 A That Norman had a police badge and he was trying to get
09:22AM 6 him out of the car.

09:22AM 7 Q Do you know if that was part of the plan?

09:23AM 8 A No.

09:23AM 9 Q So was Norman -- this is Norman Akau?

09:23AM 10 A Yes.

09:23AM 11 Q Was he -- did he appear to be to you to be impersonating a
09:23AM 12 police officer?

09:23AM 13 A Yes.

09:23AM 14 Q And does he say anything, if you recall, to Nico?

09:23AM 15 A Yes, he tells him to get out of the car.

09:23AM 16 Q Similar to what a police officer may do?

09:23AM 17 A Correct.

09:23AM 18 Q Does Nico comply?

09:23AM 19 A He hesitated at first, but yes, he did.

09:23AM 20 Q And what happens after Nico gets out of the car?

09:23AM 21 A When Nico gets out of the car, the second car that blocked
09:23AM 22 us in, they grabbed the purse out of my back seat.

09:23AM 23 Q Okay. Did you see how many people came out of that second
09:23AM 24 car?

09:23AM 25 A Only one came out, but there was about three people in the

09:23AM 1 car.

09:23AM 2 Q Okay. Did you see whether they had any disguise on?

09:23AM 3 A Yes, they had masks on.

09:23AM 4 Q Do you recall seeing any firearms?

09:23AM 5 A Yes.

09:23AM 6 Q What do you recall was taken from the car?

09:24AM 7 A My purse, and then Norman ended up taking the 5 pounds of
09:24AM 8 ice.

09:24AM 9 Q Okay. Despite the fact that they were -- the other people
09:24AM 10 in the car were wearing masks, did you -- did you know who
09:24AM 11 those other occupants were?

09:24AM 12 A Not at the time.

09:24AM 13 Q Did you later figure out who they were?

09:24AM 14 A Yes, I did.

09:24AM 15 Q And is it the individuals that you pointed out before and
09:24AM 16 that are on the -- that you pointed out the photos from?

09:24AM 17 A Yes.

09:24AM 18 Q What happens -- so they get the drugs?

09:24AM 19 A Right.

09:24AM 20 Q They take your purse. Did you know that was going to be
09:24AM 21 part of the plan?

09:24AM 22 A No, I did not.

09:24AM 23 MR. NAMMAR: Can we show the witness Exhibit 8-1,
09:24AM 24 which is not in evidence at this time? It's from the original
09:24AM 25 list.

09:24AM 1 THE COURT: 8-1?

09:25AM 2 MR. NAMMAR: 8-1.

09:25AM 3 THE COURT: Go ahead.

09:25AM 4 BY MR. NAMMAR:

09:25AM 5 Q Do you recognize what's shown in 8-1?

09:25AM 6 A Yes, I do.

09:25AM 7 Q What is it?

09:25AM 8 A It's near 21 Mart where they robbed Nico.

09:25AM 9 Q Okay. Is this an accurate map of the vicinity of where

09:25AM 10 Nico was robbed?

09:25AM 11 A Yes.

09:25AM 12 MR. NAMMAR: Your Honor, I'd move to admit 8-1.

09:25AM 13 THE COURT: Any objection, Counsel?

09:25AM 14 MS. PANAGAKOS: No objection, Your Honor.

09:25AM 15 THE COURT: Without objection, 8-1 is admitted. You

09:25AM 16 may publish.

09:25AM 17 (Exhibit 8-1 was received in evidence.)

09:25AM 18 BY MR. NAMMAR:

09:25AM 19 Q 8-1 is up on the screen. What part of town is this in,

09:25AM 20 Ms. Akau?

09:25AM 21 A Like Kalihi area.

09:25AM 22 Q Okay. And the red dot, do you recognize that being in the

09:25AM 23 vicinity of where the robbery occurred?

09:25AM 24 A Yes.

09:25AM 25 Q Can you put an X on where you recall the robbery

09:25AM 1 occurring.

09:25AM 2 A (Complying.)

09:26AM 3 Q And for the record, you're marking very close proximity to

09:26AM 4 the 21 Mart; is that right?

09:26AM 5 A Yes.

09:26AM 6 MR. NAMMAR: May we show the witness 8-7, which is

09:26AM 7 from the original list and not in evidence yet?

09:26AM 8 THE COURT: Go ahead.

09:26AM 9 BY MR. NAMMAR:

09:26AM 10 Q Ms. Akau, do you recognize 8-7?

09:26AM 11 A Yes.

09:26AM 12 Q What is it?

09:26AM 13 A That's the 21 Mart.

09:26AM 14 Q And is it an accurate photo of the 21 Mart where the

09:26AM 15 robbery occurred?

09:26AM 16 A Yes.

09:26AM 17 MR. NAMMAR: Your Honor, I'd move to admit 8-7.

09:26AM 18 THE COURT: Any objection?

09:26AM 19 MS. PANAGAKOS: No objection.

09:26AM 20 THE COURT: Without objection, 8-7 is admitted. You

09:26AM 21 may publish.

09:26AM 22 (Exhibit 8-7 was received in evidence.)

09:26AM 23 BY MR. NAMMAR:

09:26AM 24 Q Okay, Ms. Akau, the jury can see 8-7. Tell the jury what

09:26AM 25 we're looking at here.

09:26AM 1 A We're looking at the place where they robbed Nico, Jake
09:26AM 2 Smith and the boys.

09:26AM 3 Q And on this photo can you see the area where the robbery
09:26AM 4 occurred?

09:26AM 5 A Yes.

09:27AM 6 Q Can you put an X by that area where you believe that
09:27AM 7 occurred.

09:27AM 8 A (Complying.)

09:27AM 9 Q So what happens --

09:27AM 10 MR. NAMMAR: You can take that down.

09:27AM 11 BY MR. NAMMAR:

09:27AM 12 Q What happened after the robbery of Nico?

09:27AM 13 A I take Nico back to The Shack in Kailua.

09:27AM 14 Q Okay. And then where did you go?

09:27AM 15 A To Waimanalo.

09:27AM 16 Q Why do you go there?

09:27AM 17 A Because that's where they were all meeting.

09:27AM 18 Q Okay. And when you say -- well, did you end up going to
09:27AM 19 Waimanalo?

09:27AM 20 A Yes.

09:27AM 21 Q Where do you go?

09:27AM 22 A By the Waimanalo gym.

09:27AM 23 Q Okay. And who do you see there?

09:27AM 24 A Everyone that I listed earlier.

09:27AM 25 Q Okay. And when you get to the gym, what is the mood like,

09:27AM 1 if you recall?

09:27AM 2 A They were happy.

09:27AM 3 Q Why were they happy?

09:27AM 4 A Because they just robbed Nico.

09:27AM 5 Q Of what?

09:27AM 6 A The 5 pounds of ice.

09:27AM 7 Q Did you see the drugs at the gym?

09:28AM 8 A No.

09:28AM 9 Q Were you given any of those drugs?

09:28AM 10 A No.

09:28AM 11 Q Were you given any money?

09:28AM 12 A Later, yes.

09:28AM 13 Q How much?

09:28AM 14 A I would say less than a thousand.

09:28AM 15 Q From who?

09:28AM 16 A Norman.

09:28AM 17 MS. PANAGAKOS: I'm sorry, Your Honor, I didn't hear
09:28AM 18 the amount.

09:28AM 19 THE WITNESS: Sorry. Less than a thousand.

09:28AM 20 MS. PANAGAKOS: Thank you.

09:28AM 21 BY MR. NAMMAR:

09:28AM 22 Q From whom were you given money?

09:28AM 23 A Norman.

09:28AM 24 MR. NAMMAR: Your Honor, may we publish 6-44, which is
09:28AM 25 already in evidence? It's a map of the Waimanalo area.

09:28AM 1 THE COURT: Yes, go ahead.

09:28AM 2 BY MR. NAMMAR:

09:28AM 3 Q Ms. Akau, 6-44 is on the screen. Do you see where you
09:28AM 4 went to the -- to the Waimanalo gym --

09:28AM 5 A Yes.

09:28AM 6 Q -- after the robbery?

09:28AM 7 Can you put an X on the map?

09:28AM 8 A (Complying.)

09:29AM 9 Q And for the record, you're marking very close to the
09:29AM 10 baseball field in the Waimanalo District Park?

09:29AM 11 A Yes.

09:29AM 12 Q And when we talked earlier today you mentioned
09:29AM 13 Mr. Stancil's house. Is this area in close proximity to
09:29AM 14 Mr. Stancil's house?

09:29AM 15 A Yes.

09:29AM 16 Q Where is Mr. Stancil's house?

09:29AM 17 A (Indicating.)

09:29AM 18 Q Okay. And when you were back at the park, was everyone
09:29AM 19 discussing what took place at the robbery?

09:29AM 20 A No.

09:29AM 21 Q Okay. What was the purpose of meeting back at the park?

09:29AM 22 A Just to get back together.

09:30AM 23 MR. NAMMAR: Can we show the witness now 8-5, which is
09:30AM 24 not in evidence?

09:30AM 25 THE COURT: Go ahead.

09:30AM 1 BY MR. NAMMAR:

09:30AM 2 Q Do you recognize what's shown in 8-5?

09:30AM 3 A Yes, that's Waimanalo gym.

09:30AM 4 Q Is this where you met up with the individuals that were
09:30AM 5 involved in the robbery?

09:30AM 6 A In that area, yes.

09:30AM 7 Q Okay. Is this an accurate photo of the Waimanalo gym?

09:30AM 8 A Yes.

09:30AM 9 MR. NAMMAR: Your Honor, I'd move to admit 8-5.

09:30AM 10 THE COURT: Any objection?

09:30AM 11 MS. PANAGAKOS: No objection.

09:30AM 12 THE COURT: Without objection, 8-5 is admitted. You
09:30AM 13 may publish.

09:30AM 14 (Exhibit 8-5 was received in evidence.)

09:30AM 15 BY MR. NAMMAR:

09:30AM 16 Q Okay. 8-5 is up on the screen. What are we looking at
09:30AM 17 here?

09:30AM 18 A The Waimanalo gym.

09:30AM 19 Q So you said this was in June -- around June 2016?

09:31AM 20 A Yes, the beginning of June.

09:31AM 21 Q Did you start to see Mr. Smith more after this particular
09:31AM 22 robbery?

09:31AM 23 A Yes.

09:31AM 24 Q And were you spending time with him after this robbery?

09:31AM 25 A A little bit, yes.

09:31AM 1 Q Did you get to learn what Mr. Smith did for work?

09:31AM 2 A Yes.

09:31AM 3 Q Did you know how he made money?

09:31AM 4 A Yes.

09:31AM 5 Q How?

09:31AM 6 A By robbing people.

09:31AM 7 Q You earlier mentioned that he did work for Mr. Miske.

09:31AM 8 A Correct.

09:31AM 9 Q And the kind of work -- what was the kind of work that you

09:31AM 10 were told he did for Mr. Miske?

09:31AM 11 A Beat up people and did basically whatever he asked.

09:31AM 12 Q Okay. Would he tell you he was paid for that work?

09:32AM 13 A Yes.

09:32AM 14 Q You mentioned robberies, that he did robberies. Would you

09:32AM 15 hear about Mr. Smith's involvement in robberies from other

09:32AM 16 people in the community besides Mr. Smith?

09:32AM 17 A Yes.

09:32AM 18 Q Was he known for that on the east side?

09:32AM 19 A Yes.

09:32AM 20 Q Did you participate in a second robbery with Mr. Smith?

09:32AM 21 A Yes.

09:32AM 22 Q Who was this robbery of?

09:32AM 23 A Palani Mitchell.

09:32AM 24 Q And around when was this?

09:32AM 25 A I don't recall the date.

09:32AM 1 Q Okay. Was it close in time to the Nico robbery?

09:32AM 2 A Yes.

09:32AM 3 Q Was it in 2016?

09:32AM 4 A Yes.

09:32AM 5 Q Okay. Who was Palani Mitchell?

09:32AM 6 MS. PANAGAKOS: Your Honor, I object. Same objection
09:32AM 7 as the motions in limine.

09:32AM 8 THE COURT: All right. Same ruling. Overruled.

09:32AM 9 Go ahead.

09:32AM 10 BY MR. NAMMAR:

09:32AM 11 Q Who was Palani Mitchell?

09:32AM 12 A He was another drug dealer on our side.

09:32AM 13 Q Okay. And what was the purpose of targeting Mr. Mitchell?

09:32AM 14 A To grab 2 pounds of ice.

09:33AM 15 Q What, if anything, did you do in that robbery?

09:33AM 16 A I just drove my car past where they were going to rob him
09:33AM 17 to make sure there wasn't any cops going that way.

09:33AM 18 Q And you say you were going to be a lookout essentially?

09:33AM 19 A Basically.

09:33AM 20 Q Who were the other people -- and what were you supposed to
09:33AM 21 do if you saw police?

09:33AM 22 A Just let them know.

09:33AM 23 Q And how would you let them know?

09:33AM 24 A Call them.

09:33AM 25 Q Who were the people that were actually going to do the

09:33AM 1 robbery of Mr. Mitchell?

09:33AM 2 A Jacob Smith, Lance Bermudez and Keli'i Young.

09:33AM 3 Q Who is Keli'i Young?

09:33AM 4 A One of their friends.

09:33AM 5 Q Did this robbery occur?

09:33AM 6 A Yes.

09:33AM 7 Q What part of town?

09:33AM 8 A In Kalihi.

09:33AM 9 Q Do you recall whether it occurred near any businesses or

09:33AM 10 schools?

09:33AM 11 A I don't recall.

09:33AM 12 Q And did you serve as a lookout during that robbery?

09:33AM 13 A Yes, I did.

09:33AM 14 Q What happened after the robbery?

09:33AM 15 A We all went to Jake's house in Kalihi.

09:34AM 16 Q And how do you know the robbery occurred?

09:34AM 17 A Because they had the ice with them.

09:34AM 18 Q And did you see the ice?

09:34AM 19 A Yes.

09:34AM 20 Q And had you seen methamphetamine before?

09:34AM 21 A No.

09:34AM 22 Q What did the ice look like?

09:34AM 23 A Well, I basically saw Hammah smoking it. So...

09:34AM 24 Q Do you know whether during that robbery if Mr. Smith,

09:34AM 25 Mr. Bermudez and Mr. Young had firearms with them?

09:34AM 1 A Yes, they did.

09:34AM 2 Q How do you know that?

09:34AM 3 A They always had firearms with them, especially during a
09:34AM 4 robbery.

09:34AM 5 Q Do you recall whether you got anything for serving as a
09:34AM 6 lookout of the robbery of Palani Mitchell?

09:34AM 7 A No, I don't recall.

09:34AM 8 Q You don't recall if you got any money?

09:34AM 9 A Yeah.

09:35AM 10 MR. NAMMAR: Could we show the witness now
09:35AM 11 Exhibit 1-706, which is from our original list and not in
09:35AM 12 evidence?

09:35AM 13 THE COURT: Go ahead.

09:35AM 14 BY MR. NAMMAR:

09:35AM 15 Q Do you recognize what is shown here, Ms. Akau?

09:35AM 16 A Yes.

09:35AM 17 Q What is shown here?

09:35AM 18 A A rental car.

09:35AM 19 Q Is this a car that you rented?

09:35AM 20 A Yes.

09:35AM 21 Q For who?

09:35AM 22 A For Jake.

09:35AM 23 Q Is this an accurate picture of the car you rented for
09:35AM 24 Jake?

09:35AM 25 A Yes.

09:35AM 1 MR. NAMMAR: Your Honor, I move to admit 1-706.

09:35AM 2 THE COURT: Any objection, Counsel?

09:35AM 3 MS. PANAGAKOS: No objection.

09:35AM 4 THE COURT: Without objection, 1-706 -- I assume
09:35AM 5 you're going to tie this to something?

09:35AM 6 MR. NAMMAR: Yes.

09:35AM 7 THE COURT: All right.

09:35AM 8 (Exhibit 1-706 was received in evidence.)

09:35AM 9 BY MR. NAMMAR:

09:35AM 10 Q 1-706 is up on the screen. You said you rented this car.

09:35AM 11 A Correct.

09:35AM 12 Q Why did you rent this car for Mr. Smith?

09:35AM 13 A Because Norman Akau and Jake asked me to.

09:35AM 14 Q And what did they say was the purpose of renting this car?

09:35AM 15 A To basically be a safe car.

09:36AM 16 Q Did you know what they meant when they said "safe car"?

09:36AM 17 A Well, a legal car.

09:36AM 18 Q Did you get anything in return for renting this car?

09:36AM 19 A No.

09:36AM 20 Q Where did you rent it, if you recall?

09:36AM 21 A Enterprise, I believe.

09:36AM 22 Q What did you do after you rented the car?

09:36AM 23 A Gave it to them and drove away.

09:36AM 24 Q Okay. When you picked up the car, what condition was
09:36AM 25 it -- was it in?

09:36AM 1 A Good condition.

09:36AM 2 Q Did you notice any damage on the car?

09:36AM 3 A No, I did not.

09:36AM 4 Q When you picked up the car, do you recall how long of a

09:36AM 5 rental this was supposed to be for?

09:36AM 6 A Two days.

09:36AM 7 Q And did it end up going for much longer?

09:36AM 8 A Yes.

09:36AM 9 Q For how long?

09:36AM 10 A A few months.

09:36AM 11 Q And during that few month period, would you on occasion

09:36AM 12 see Mr. Smith driving the car?

09:36AM 13 A Yes.

09:36AM 14 Q Would you see anybody else driving the car?

09:36AM 15 A No.

09:37AM 16 Q Were you concerned when the rental was going on for

09:37AM 17 months?

09:37AM 18 A Yes.

09:37AM 19 Q Why were you concerned?

09:37AM 20 A Because it was only supposed to be rented out for a couple

09:37AM 21 of days.

09:37AM 22 MR. NAMMAR: Can we show the witness 1-702,

09:37AM 23 specifically page 19?

09:37AM 24 BY MR. NAMMAR:

09:37AM 25 Q Do you recognize what is shown here?

09:37AM 1 A Yes.

09:37AM 2 Q What is this?

09:37AM 3 A The Enterprise agreement basically.

09:37AM 4 Q Is this what you filled out when you picked up the rental
09:37AM 5 car?

09:37AM 6 A Yes.

09:37AM 7 Q The one that you told us you rented as a safe car?

09:37AM 8 A Correct.

09:37AM 9 Q Did you later learn that a crime had been committed in
09:37AM 10 this car?

09:37AM 11 A Yes.

09:37AM 12 MR. NAMMAR: Your Honor, I move to admit 1-702 at this
09:37AM 13 time. This document on page 1 is accompanied by a business
09:38AM 14 record declaration and certification of authenticity which
09:38AM 15 complies with 902(11) and 803(6).

09:38AM 16 THE COURT: So this exhibit consists of more -- far
09:38AM 17 more than just the first page that you described as well as
09:38AM 18 page 19, to which the witness just testified to. Are you
09:38AM 19 seeking to admit only those two pages or the entirety of the
09:38AM 20 exhibit?

09:38AM 21 MR. NAMMAR: The entirety of the exhibit is a business
09:38AM 22 record that was furnished pursuant to 1-702. It's also
09:38AM 23 pursuant to the parties' stipulation, which is 12 -- document
09:38AM 24 number 1296, which is relevant to business records.

09:38AM 25 THE COURT: So again, the question is are you seeking

09:38AM 1 to admit the entirety of the exhibit or just those two pages?

09:38AM 2 MR. NAMMAR: I'm sorry, Your Honor, the entire

09:38AM 3 exhibit.

09:38AM 4 THE COURT: All right. Counsel?

09:38AM 5 MS. PANAGAKOS: Your Honor, we do have a stipulation

09:38AM 6 that it is a business record. However, this line of

09:39AM 7 questioning was the subject of Motion in Limine Number 5, and

09:39AM 8 so I would object to the question regarding the -- the crime

09:39AM 9 that was allegedly committed with it on the grounds of

09:39AM 10 relevance -- irrelevance to any element of Count 1 and only

09:39AM 11 relevant to impeachment.

09:39AM 12 THE COURT: All right. So the objection is overruled.

09:39AM 13 Exhibit 1-702 is admitted.

09:39AM 14 (Exhibit 1-702 was received in evidence.)

09:39AM 15 MR. NAMMAR: May we publish, Your Honor?

09:39AM 16 THE COURT: You may.

09:39AM 17 MR. NAMMAR: Okay. Can we bring up page 19? And can

09:39AM 18 you zoom in on the top left side. Perfect.

09:39AM 19 BY MR. NAMMAR:

09:39AM 20 Q So, Ms. Akau, the renter on the top left side is shown as

09:40AM 21 Ashlin Scanlan. Do you recognize that name?

09:40AM 22 A Yes.

09:40AM 23 Q How so?

09:40AM 24 A That was my name when I was married.

09:40AM 25 Q And the date -- the first date is August 31, 2016. Do you

09:40AM 1 see that?

09:40AM 2 A Yes.

09:40AM 3 Q Is that around the time when you recall picking up this
09:40AM 4 rental car?

09:40AM 5 A Yes.

09:40AM 6 Q And then the second date is September 3rd, just a few days
09:40AM 7 later, 2016. Do you see that?

09:40AM 8 A Yes.

09:40AM 9 Q Was this car actually returned on September 3rd?

09:40AM 10 A It was not.

09:40AM 11 Q Was it returned much later?

09:40AM 12 A Yes.

09:40AM 13 Q The description below that is a 300C four-door white
09:40AM 14 Chrysler. Do you see that?

09:40AM 15 A Yes.

09:40AM 16 Q Is that the car that you recall renting?

09:40AM 17 A Yes.

09:40AM 18 Q And the license plate is X -- SXD816. Do you see that?

09:40AM 19 A Yes.

09:41AM 20 Q Moving forward to October 2016, so about a month and a
09:41AM 21 half after you rented this car, were you contacted by Mr. Smith
09:41AM 22 about this particular rental car?

09:41AM 23 A Yes.

09:41AM 24 Q What did he tell you?

09:41AM 25 A He said that his friend shot a gun out of it.

09:41AM 1 Q Sorry, I don't know if I heard that.

09:41AM 2 A Sorry. He said his friend Dae Han Moon shot -- tried to
09:41AM 3 shoot out of the car.

09:41AM 4 Q Were you concerned when you heard that?

09:41AM 5 A Yes.

09:41AM 6 Q Okay. Dae Han Moon, who is that?

09:41AM 7 A His friend.

09:41AM 8 MR. NAMMAR: If we can show the witness 1-38, which is
09:41AM 9 on the original list and not in evidence yet?

09:41AM 10 THE COURT: Go ahead.

09:41AM 11 BY MR. NAMMAR:

09:41AM 12 Q Do you recognize what is shown in 1-38?

09:42AM 13 A Yes.

09:42AM 14 Q What is it?

09:42AM 15 A A picture of Dae Han.

09:42AM 16 Q Is this an accurate photo of Dae Han Moon?

09:42AM 17 A Yes.

09:42AM 18 MR. NAMMAR: Your Honor, I move to admit 1-38.

09:42AM 19 THE COURT: Any objection, Counsel?

09:42AM 20 MS. PANAGAKOS: No objection.

09:42AM 21 THE COURT: Without objection, 1-38 is admitted. You
09:42AM 22 may publish.

09:42AM 23 (Exhibit 1-38 was received in evidence.)

09:42AM 24 BY MR. NAMMAR:

09:42AM 25 Q Okay, Ms. Akau, the jury can see 1-38. Who are we looking

09:42AM 1 at here?

09:42AM 2 A That is Dae Han Moon.

09:42AM 3 Q And is this the individual that Mr. Smith was talking
09:42AM 4 about shooting out of the car?

09:42AM 5 A Yes.

09:42AM 6 Q The rental car that you had rented?

09:42AM 7 A Yes.

09:42AM 8 Q So after you get that call from Mr. Smith about the
09:42AM 9 shooting, what, if anything, do you do about getting the rental
09:42AM 10 car back?

09:42AM 11 A I told him I needed it back.

09:42AM 12 Q And were you contacted by anybody next?

09:42AM 13 A Yes.

09:42AM 14 Q Did you have a follow-up conversation with people about
09:42AM 15 getting the car back?

09:42AM 16 A Yes.

09:42AM 17 Q Do you recall who you had a conversation with?

09:43AM 18 A Well, I talked to Jake about getting the car back.

09:43AM 19 Q Okay. Did you eventually get the car back?

09:43AM 20 A Yes.

09:43AM 21 Q From who?

09:43AM 22 A We went -- me and my ex-sister-in-law went to go get it.

09:43AM 23 Q Okay. Is who is your ex-sister-in-law?

09:43AM 24 A Teiti Scanlan.

09:43AM 25 Q How was she related to Ramsey Scanlan, your ex-husband?

09:43AM 1 A That was his sister.

09:43AM 2 Q Okay. And what do you do when you retrieve the car?

09:43AM 3 A We grabbed the car, stopped at the gas station to throw
09:43AM 4 out whatever was in the car, and then we went to return it.

09:43AM 5 Q At Enterprise?

09:43AM 6 A Yes.

09:43AM 7 Q Okay. So you returned the car. You heard about from

09:43AM 8 Mr. Smith that it was involved in a shooting. Are you

09:43AM 9 approached by law enforcement and asked about the same rental
09:43AM 10 car?

09:43AM 11 A Yes.

09:43AM 12 Q Who approaches you?

09:43AM 13 A ATF agents.

09:43AM 14 Q Okay. Is this shortly after you returned the car?

09:43AM 15 A Yes.

09:43AM 16 Q Were you asked about the rental car?

09:44AM 17 A Yes.

09:44AM 18 Q What, if anything, did you tell them about the rental car?

09:44AM 19 A I said that I rented it for a friend.

09:44AM 20 Q Did you tell them anything else about the rental car?

09:44AM 21 A No, I did not.

09:44AM 22 Q Why not?

09:44AM 23 A Because I was scared.

09:44AM 24 Q You didn't tell them about the shooting?

09:44AM 25 A No.

09:44AM 1 Q So you're approached by law enforcement, and you said you
09:44AM 2 don't -- you tell them about the car, but you don't tell them
09:44AM 3 about the shooting. Did you speak to anybody after that about
09:44AM 4 being approached by law enforcement?

09:44AM 5 A Yes.

09:44AM 6 Q Who did you speak to?

09:44AM 7 A My ex-sister-in-law, Teiti.

09:44AM 8 Q And what happened after you spoke to Teiti about being
09:44AM 9 approached by law enforcement?

09:44AM 10 A Teiti said she went to Starbucks and randomly met Mike
09:44AM 11 Miske.

09:44AM 12 Q Okay. And what happened after that?

09:45AM 13 A She said that he had a lawyer for me and that he wanted to
09:45AM 14 meet up.

09:45AM 15 Q Okay. And did you end up meeting with Michael Miske?

09:45AM 16 A Yes, I did.

09:45AM 17 Q Where did you meet with him?

09:45AM 18 A Outside Keolu liquor store in Kailua.

09:45AM 19 Q And who was present at that meeting?

09:45AM 20 A Myself, Mike Miske, and then Teiti was with our kids in
09:45AM 21 the car.

09:45AM 22 Q Okay. So could Teiti hear what you two were talking
09:45AM 23 about?

09:45AM 24 A No.

09:45AM 25 Q And where do you talk, you and Mr. Miske?

09:45AM 1 A Right outside in the parking lot.

09:45AM 2 Q Okay. What do you talk about?

09:45AM 3 A Basically that he had a lawyer and not to say anything and
09:45AM 4 that to stay away from Jake.

09:45AM 5 Q Okay. So he tells you don't say anything and he has a
09:45AM 6 lawyer for you?

09:45AM 7 A Correct.

09:45AM 8 Q Stay away from Jake?

09:45AM 9 A Yes.

09:45AM 10 Q Did you recall the lawyer that he mentioned, the name?

09:45AM 11 A No, I do not.

09:45AM 12 Q Do you recall whether the name Gary came up during this
09:46AM 13 conversation?

09:46AM 14 A I don't recall.

09:46AM 15 Q Okay. What were your thoughts about being offered a
09:46AM 16 lawyer by Mr. Miske?

09:46AM 17 A It kind of made me feel better because honestly his
09:46AM 18 approach was seemed like he was trying to be concerned about me
09:46AM 19 and the cops coming.

09:46AM 20 Q Do you still think that today?

09:46AM 21 A No.

09:46AM 22 Q Why not?

09:46AM 23 A Because I believe he was just trying to save himself.

09:46AM 24 Q So Mr. Miske told you to stay away from Jacob Smith?

09:46AM 25 A Correct.

09:46AM 1 Q Did you do that?

09:46AM 2 A No.

09:46AM 3 Q You told us about Ginza, right?

09:46AM 4 A Correct.

09:46AM 5 Q You did that with Jacob Smith in March of 2017?

09:46AM 6 A Correct.

09:46AM 7 Q Okay. So after Ginza, which was in March of 2017, right,

09:46AM 8 which you've already told us about, the next month in April,

09:46AM 9 April of 2017, were you visited again by law enforcement?

09:47AM 10 A Yes.

09:47AM 11 Q And did you speak with them at this time?

09:47AM 12 A Yes.

09:47AM 13 Q And was that meeting recorded?

09:47AM 14 A Yes.

09:47AM 15 Q And without going into detail, during that recorded

09:47AM 16 meeting with law enforcement, did you speak with them about

09:47AM 17 Ginza?

09:47AM 18 A Yes.

09:47AM 19 Q Were you asked, though, during that meeting if you had

09:47AM 20 committed any robberies with Jacob Smith?

09:47AM 21 A Yes.

09:47AM 22 Q Were you truthful about that?

09:47AM 23 A No, I was not.

09:47AM 24 Q Why not?

09:47AM 25 A Because for one, I was scared. For two, my dad was with

09:47AM 1 me.

09:47AM 2 Q So your dad was with you at this meeting?

09:47AM 3 A Correct.

09:47AM 4 Q What were you scared about?

09:47AM 5 A Retaliation, getting in trouble, just everything.

09:47AM 6 Q Okay. Later on, though, did you tell law enforcement
09:47AM 7 about those robberies?

09:47AM 8 A Yes, I did.

09:47AM 9 Q And those are the same robberies that you've testified to
09:47AM 10 here today?

09:47AM 11 A Correct.

09:47AM 12 Q Have you recently reviewed a recording of that interview
09:48AM 13 that you had with law enforcement in April of 2018?

09:48AM 14 A Yes.

09:48AM 15 Q Do you recall during that interview if you were asked
09:48AM 16 about a specific phone number that Jacob Smith utilized?

09:48AM 17 A I believe so.

09:48AM 18 Q What -- did you provide them with the number?

09:48AM 19 A Yes.

09:48AM 20 Q And what number did you provide them with?

09:48AM 21 A I believe the last four might have been like 5854,
09:48AM 22 something like that.

09:48AM 23 THE COURT: Is this the April 2017 interview that you
09:48AM 24 asked her about or is this --

09:48AM 25 MR. NAMMAR: Yes.

09:48AM 1 THE COURT: -- another interview a year later?

09:48AM 2 MR. NAMMAR: I'm sorry, in the April 2017 interview.

09:48AM 3 THE WITNESS: Yes.

09:48AM 4 BY MR. NAMMAR:

09:48AM 5 Q And the number was 5854 ending, you said?

09:48AM 6 A I believe so, yes.

09:48AM 7 Q Okay. So that was April. Moving forward now to the next
09:48AM 8 month, May of 2017, do you hear about a shooting that took
09:48AM 9 place at Kualoa Ranch?

09:48AM 10 A Yes, I did.

09:49AM 11 Q How did you hear about it?

09:49AM 12 A It was all over Instagram.

09:49AM 13 Q And do you recall who were the people that were posting
09:49AM 14 about it on Instagram?

09:49AM 15 A Lindsey Kinney.

09:49AM 16 Q And did you know who Lindsey Kinney was?

09:49AM 17 A Yes, I did.

09:49AM 18 Q How did you know Lindsey Kinney?

09:49AM 19 A He was dating my ex-sister-in-law.

09:49AM 20 Q Who -- who was that?

09:49AM 21 A Teiti Scanlan.

09:49AM 22 Q That's the person you talked about before?

09:49AM 23 A Correct.

09:49AM 24 Q Now, have you had any interaction with Mr. Kinney?

09:49AM 25 A Yes.

09:49AM 1 Q So after you were -- after you hear about the shooting in
09:49AM 2 Kualoa Ranch, do you see the postings by Mr. Kinney on
09:49AM 3 Instagram?
09:49AM 4 A I do.
09:49AM 5 Q Is he -- without going into details, is he posting about
09:49AM 6 this shooting?
09:49AM 7 A Yes.
09:49AM 8 Q Okay. After that shooting, are you approached by Johnnie
09:49AM 9 Stancil?
09:49AM 10 A Yes.
09:49AM 11 Q And where -- where or how are you approached by Johnnie
09:49AM 12 Stancil?
09:49AM 13 A He reached out to me on Instagram saying he wanted to
09:49AM 14 meet, and not too long after that he came to the house, to my
09:50AM 15 house in Kailua.
09:50AM 16 Q Okay. And who was present for that meeting?
09:50AM 17 A Just him and I.
09:50AM 18 Q What did Mr. Stancil say to you during that meeting?
09:50AM 19 MS. PANAGAKOS: Objection. Hearsay.
09:50AM 20 THE COURT: Overruled. Go ahead.
09:50AM 21 THE WITNESS: He said that he wanted me to see if
09:50AM 22 Lindsey was going to talk to the grand jury.
09:50AM 23 BY MR. NAMMAR:
09:50AM 24 Q Okay. Did he say anything else about charges?
09:50AM 25 A Yeah, he said he was looking at a lot of charges.

09:50AM 1 Q Did you know what the grand jury was?

09:50AM 2 A I had no idea.

09:50AM 3 Q Do you know what the grand jury is now?

09:50AM 4 A Yes, I do.

09:50AM 5 Q How do you know what the grand jury is?

09:50AM 6 A Because I testified at the grand jury.

09:50AM 7 Q Can you tell the jury what the grand jury does?

09:50AM 8 A Basically sees if somebody can be prosecuted or not.

09:50AM 9 Q You said you testified before them. Was it in relation to

09:50AM 10 this case?

09:50AM 11 A Yes.

09:50AM 12 Q Now, around that same time, this is May of 2017, did you

09:51AM 13 also agree to become an informant with the ATF?

09:51AM 14 A Yes, I did.

09:51AM 15 Q And as part of being an informant, were you required to

09:51AM 16 sign an agreement?

09:51AM 17 A Yes.

09:51AM 18 Q Did that agreement set forth essentially the rules of your

09:51AM 19 cooperation?

09:51AM 20 A Yes.

09:51AM 21 Q And was one of those rules that you were not supposed to

09:51AM 22 break any laws?

09:51AM 23 A Yes.

09:51AM 24 Q So after you signed that agreement, I want to fast-forward

09:51AM 25 now to November of 2017, do you recall Mr. Smith contacting you

09:51AM 1 and asking for help?

09:51AM 2 A Yes.

09:51AM 3 Q Tell us about that.

09:51AM 4 A He called me and said that one of our friends got stabbed

09:51AM 5 and that they needed a ride.

09:51AM 6 Q Okay. Did you agree to help him?

09:51AM 7 A Yes.

09:51AM 8 Q Why?

09:51AM 9 A Because I wasn't going to let one of our friends go

09:51AM 10 without taking him to the hospital.

09:51AM 11 Q Did you think Mr. Smith had committed a crime?

09:51AM 12 A No.

09:51AM 13 Q So did you contact law enforcement about -- did you give

09:52AM 14 Mr. Smith a ride?

09:52AM 15 A Yes, I did.

09:52AM 16 Q Did you tell law enforcement about that after the fact?

09:52AM 17 A Not right after.

09:52AM 18 Q Eventually did you tell law enforcement about giving

09:52AM 19 Mr. Smith a ride?

09:52AM 20 A Yes.

09:52AM 21 Q Where did you pick him up?

09:52AM 22 A In Kailua.

09:52AM 23 Q And do you recall where?

09:52AM 24 A I believe it was by Checkers, now it's O'Reilly's.

09:52AM 25 Q And who -- who, if anybody, was Mr. Smith with when you

09:52AM 1 picked him up?

09:52AM 2 A He was with two younger kids.

09:52AM 3 Q Do you know their names?

09:52AM 4 A I believe they go by Cash and Jayword.

09:52AM 5 Q One is named is Cash and one is named Jayword?

09:52AM 6 A Correct.

09:52AM 7 MR. NAMMAR: Can we show the witness --

09:52AM 8 BY MR. NAMMAR:

09:52AM 9 Q Oh, Cash and Jayword, if you saw their photos, do you
09:52AM 10 think you could recognize them?

09:52AM 11 A Yes.

09:52AM 12 MR. NAMMAR: Can we show the witness 1-862, which is
09:52AM 13 from the original list?

09:53AM 14 THE COURT: All right.

09:53AM 15 BY MR. NAMMAR:

09:53AM 16 Q Do you recognize what's shown here?

09:53AM 17 A Yes.

09:53AM 18 MR. NAMMAR: Can we show the witness now 1-863, which
09:53AM 19 is from the original list?

09:53AM 20 THE COURT: Yes, go ahead.

09:53AM 21 BY MR. NAMMAR:

09:53AM 22 Q Do you recognize what is shown here?

09:53AM 23 A Yes.

09:53AM 24 Q These two photos, what do they depict?

09:53AM 25 A The two boys, Cash and Jayword.

09:53AM 1 Q Okay. Do you know which one is Cash and which one is
09:53AM 2 Jayword?
09:53AM 3 A I believe this one is Cash.
09:53AM 4 Q Okay. And the previous one we looked at you think was
09:53AM 5 Jayword?
09:53AM 6 A Yes, correct.
09:53AM 7 Q Okay. Are these accurate photos of Cash and Jayword?
09:53AM 8 A Yes.
09:53AM 9 MR. NAMMAR: Your Honor, I move to admit 1-862 and
09:53AM 10 1-863.
09:53AM 11 THE COURT: Any objection?
09:53AM 12 MS. PANAGAKOS: No objection.
09:53AM 13 THE COURT: Without objection, those two exhibits,
09:53AM 14 1-862 and 1-863, are each admitted. You may publish.
09:53AM 15 (Exhibits 1-862 and 1-863 were received in evidence.)
09:54AM 16 MR. NAMMAR: Can you publish 1-863.
09:54AM 17 BY MR. NAMMAR:
09:54AM 18 Q The jury can see 1-863. Who do you think this is?
09:54AM 19 A Cash.
09:54AM 20 Q And this is one of the boys that you picked up?
09:54AM 21 A Correct.
09:54AM 22 Q With Jake Smith?
09:54AM 23 A Correct.
09:54AM 24 Q And can you go to 1-862 now. What is shown here?
09:54AM 25 A Jayword.

09:54AM 1 Q And is this another one of the boys that you picked up
09:54AM 2 with Jake Smith?
09:54AM 3 A Correct.
09:54AM 4 Q When you -- when you picked Jake Smith, Cash and Jayword
09:54AM 5 up, where did you take them?
09:54AM 6 A To right down the street in Kailua to Aikahi to meet with
09:54AM 7 their other friend.
09:54AM 8 Q Who did they meet with there?
09:54AM 9 A I believe his name was Frankie.
09:54AM 10 Q Did you know Frankie's last name?
09:54AM 11 A No.
09:54AM 12 Q Was there discussion in the car about what happened?
09:54AM 13 A No, not really.
09:54AM 14 Q What was the mood like in the car?
09:54AM 15 A They were all sad.
09:54AM 16 Q Did they say why they were sad?
09:54AM 17 A Well, because they believed that he -- that Dayson was --
09:55AM 18 died. Died.
09:55AM 19 Q Who is Dayson?
09:55AM 20 A The person that the got stabbed.
09:55AM 21 Q Did you know Dayson's last name?
09:55AM 22 A No.
09:55AM 23 Q In the car after you dropped them off, did you notice
09:55AM 24 whether they leave -- they left anything behind?
09:55AM 25 A Yes, they left two bags.

09:55AM 1 Q Did you look through those bags?

09:55AM 2 A Yes.

09:55AM 3 Q Did you notice anything of significance?

09:55AM 4 A No.

09:55AM 5 Q Did you later discover who owned those bags?

09:55AM 6 A Yes.

09:55AM 7 Q What did you discover?

09:55AM 8 A Jake -- Jacob Smith owned one, and then Johnnie Stancil

09:55AM 9 owned the other.

09:55AM 10 Q The one that was Johnnie Stancil's, how would you describe

09:55AM 11 that one?

09:55AM 12 A It was a red Supreme kind of like designer backpack.

09:55AM 13 Q Okay. And what ended up happening with those two bags

09:55AM 14 that were left in your car?

09:55AM 15 A Jake came to get his, and then Johnnie and his girlfriend

09:55AM 16 came to get his bag.

09:56AM 17 Q And about how -- how far in time after this ride that you

09:56AM 18 had given him did Johnnie come pick up his bag?

09:56AM 19 A I don't recall. At least a week.

09:56AM 20 Q About a week?

09:56AM 21 A At least, yeah.

09:56AM 22 Q You mentioned Chloe. He came with Chloe. Who is Chloe?

09:56AM 23 A It was his girlfriend at the time.

09:56AM 24 Q Did you know her last name?

09:56AM 25 A Chang, I believe.

09:56AM 1 Q Do you know what kind of car they arrived in?

09:56AM 2 A In a Jaguar.

09:56AM 3 Q Did you know whose car that was?

09:56AM 4 A It was Chloe's.

09:56AM 5 Q Did you -- when Mr. Stancil picked up the bag, did you

09:56AM 6 speak with Mr. Stancil?

09:56AM 7 A Not really.

09:56AM 8 Q Did he tell you anything about the bag?

09:56AM 9 A No.

09:56AM 10 Q Did he say anything about speaking to law enforcement?

09:56AM 11 A I don't recall.

09:56AM 12 Q Now, moving forward into 2018, did you continue to have

09:57AM 13 contact with Jacob Smith?

09:57AM 14 A Yes.

09:57AM 15 Q Would you speak with him over the telephone?

09:57AM 16 A Yes.

09:57AM 17 Q Would you text message with him?

09:57AM 18 A Yes.

09:57AM 19 Q Among other things, did you talk to him about a BMW?

09:57AM 20 A Yes.

09:57AM 21 Q What was that about?

09:57AM 22 A He needed a car, another safe car basically for him and

09:57AM 23 his kids.

09:57AM 24 Q Okay. And was that car affiliated with you somehow?

09:57AM 25 A Yes.

09:57AM 1 Q How so?

09:57AM 2 A I went with him to go get it.

09:57AM 3 Q Okay. And did you have discussions with him about selling

09:57AM 4 that car?

09:57AM 5 A Yes.

09:57AM 6 Q Why?

09:57AM 7 A Because I wanted nothing to do with him.

09:57AM 8 Q Okay. And how was that car affiliated with you?

09:57AM 9 A Because I owned -- basically owned the car. It was

09:57AM 10 registered under me.

09:57AM 11 Q So the title would have had your name on it?

09:57AM 12 A Correct.

09:57AM 13 Q Moving forward now to the summer of 2020, couple of years

09:57AM 14 later, did you learn that Michael Miske, John Stancil and

09:58AM 15 others were arrested and charged?

09:58AM 16 A Yes.

09:58AM 17 Q And after they were charged, did you get a phone call from

09:58AM 18 Mr. Smith?

09:58AM 19 A Yes.

09:58AM 20 Q And where was Mr. Smith at the time?

09:58AM 21 A I believe he was in jail.

09:58AM 22 Q How did you know that?

09:58AM 23 A From the phone call.

09:58AM 24 Q Okay. And what, if anything, did you and Mr. Smith

09:58AM 25 discuss?

09:58AM 1 A He basically just told me that to tell on him because I
09:58AM 2 had a lot to lose. So if the cops come for me, to tell on him.
09:58AM 3 Q Okay. What did you understand to tell on you to mean?
09:58AM 4 A To tell them everything I knew.
09:58AM 5 Q Okay. Did you know -- did Mr. Smith know that you were
09:58AM 6 cooperating at the time?
09:58AM 7 A No, he did not.
09:58AM 8 Q During this conversation, did Mr. Smith say anything about
09:58AM 9 what you shouldn't say?
09:59AM 10 A I just -- I don't recall.
09:59AM 11 Q Okay. Did he tell you to make anything up?
09:59AM 12 A No, he did not.
09:59AM 13 Q Did he encourage you in any way?
09:59AM 14 A He basically said to tell on him.
09:59AM 15 Q Okay. At the time you had this phone call with Mr. Smith,
09:59AM 16 were you still giving information to the ATF?
09:59AM 17 A Yes.
09:59AM 18 Q And after you had this conversation, did you tell the ATF
09:59AM 19 about it?
09:59AM 20 A Yes.
09:59AM 21 Q Okay. Ms. Akau, do you recall the -- you talked to us
09:59AM 22 about the Keolu liquor store meeting with Mr. Miske?
10:00AM 23 A Correct.
10:00AM 24 Q And you also -- you talked about Ginza which happened in
10:00AM 25 March of 2017?

10:00AM 1 A Correct.

10:00AM 2 Q That meeting with Mr. Miske at the liquor store, do you
10:00AM 3 recall if that happened before Keolu liquor or after -- excuse
10:00AM 4 me, before Ginza or after?

10:00AM 5 A That happened before Ginza.

10:00AM 6 Q Okay. So Ginza was March 2017, and you're meeting with
10:00AM 7 Mr. Miske you believe was before then?

10:00AM 8 A I believe so.

10:00AM 9 MR. NAMMAR: Okay. Pass the witness, Your Honor.

10:00AM 10 THE COURT: It's a little earlier than we typically
10:00AM 11 take breaks, but given where we are with the examination, why
10:00AM 12 don't we go ahead and do that a little bit early this morning
10:00AM 13 before we begin the cross-examination of Ms. Akau.

10:00AM 14 As we go to break, we're just after the 10:00 hour,
10:00AM 15 I'll remind our jurors to refrain from discussing the substance
16 of this case with anyone, including each other, until I advise
17 you otherwise; to refrain from accessing any media or other
18 accounts of this case that may be out there; and finally, do
19 not conduct any independent investigation into the facts,
20 circumstances or persons involved.

10:01AM 21 Try to take it -- about 20 minutes I think is what
10:01AM 22 we've been averaging, so let's try to keep it to that, and then
10:01AM 23 we will begin again with Ms. Akau.

10:01AM 24 (Proceedings were recessed at 10:01 a.m. to 10:20
10:02AM 25 a.m.)

10:20AM 1 THE COURT: Okay. Back from our first trial break of
10:26AM 2 the day.
10:26AM 3 Ms. Panagakos, you were about to begin your cross of
10:26AM 4 Ms. Akau. You may begin when you are ready.
10:26AM 5 MS. PANAGAKOS: Thank you, Your Honor.
10:26AM 6 CROSS-EXAMINATION
10:26AM 7 BY MS. PANAGAKOS:
10:26AM 8 Q Ms. Akau, you at a time were married to Ramsey Scanlan?
10:26AM 9 A Correct.
10:26AM 10 Q When was that?
10:26AM 11 A I was married to him in 2012 -- 2014.
10:26AM 12 Q And you were still in touch with him in 2016?
10:26AM 13 A Yes.
10:26AM 14 Q And he was a drug dealer?
10:26AM 15 A More so a user than a drug dealer.
10:26AM 16 Q Did he get drugs from Nico Carignan that he supplied to
10:26AM 17 others?
10:26AM 18 A Yes.
10:26AM 19 Q And when was that?
10:26AM 20 A About 2016.
10:27AM 21 Q And so was he living with you at that time?
10:27AM 22 A No.
10:27AM 23 Q So how did you get to know Nico Carignan?
10:27AM 24 A He was his friend previous before he started giving him
10:27AM 25 drugs.

10:27AM 1 Q And what was the nature of your friendship with him?

10:27AM 2 A Well, that was his friend so he would always hang out with
10:27AM 3 him, so I would be around.

10:27AM 4 Q And you were -- what was the nature -- what was the state
10:27AM 5 of your relationship with Mr. Carignan in 2016 when you set him
10:27AM 6 up?

10:27AM 7 A Before or after?

10:27AM 8 Q Before.

10:27AM 9 A Before we were friend -- we were friends.

10:27AM 10 Q You were friends?

10:27AM 11 A Yeah.

10:27AM 12 Q And you knew him to be a drug dealer?

10:27AM 13 A Yes.

10:27AM 14 Q And had you ever had prior drug related conversations with
10:27AM 15 him?

10:27AM 16 A Never.

10:27AM 17 Q And you just went up to him one day and said, I have
10:28AM 18 friends who want to buy 5 pounds and --

10:28AM 19 A Yes.

10:28AM 20 Q -- a deal was set up just like that for 5 pounds?

10:28AM 21 A Yes.

10:28AM 22 Q With you never having any history of drug dealing?

10:28AM 23 A Because he knew my -- my ex-husband was missing. He
10:28AM 24 just -- he wasn't living in the house, so I would talk to him
10:28AM 25 to try and get ahold of my ex-husband, and he'd tell me what he

10:28AM 1 would do with him, give him the drugs. So that's how it kind

10:28AM 2 of opened up that conversation.

10:28AM 3 Q So in 2016 you were in touch with him about your husband

10:28AM 4 being missing?

10:28AM 5 A Yes.

10:28AM 6 Q And how frequently were you in touch with him about that?

10:28AM 7 A I don't recall. Probably at least once a week.

10:28AM 8 Q But you were no longer married to him?

10:28AM 9 A We were divorced in 2018.

10:28AM 10 Q Okay. So I'm sorry, I misunderstood. I thought you said

10:28AM 11 you were married from 2012 to 2014?

10:28AM 12 A No, I was thinking -- 2012 was when we got together. We

10:28AM 13 were married 2014.

10:28AM 14 Q Okay. Until -- until 2018?

10:28AM 15 A Yes, correct.

10:28AM 16 Q Okay. All right. So during the 2016 time frame your

10:28AM 17 husband was dealing drugs for Nicholas Carignan?

10:29AM 18 A Correct.

10:29AM 19 Q You would contact Nicholas Carignan to discuss your

10:29AM 20 husband's whereabouts in relation to his drug activity?

10:29AM 21 A Correct.

10:29AM 22 Q And it was Kurt Kipapa, Jr., who initially brought the

10:29AM 23 idea to you and Norman Akau, right?

10:29AM 24 A Well, it was Norman Akau.

10:29AM 25 Q And was Kurt Kipapa, Jr., present for that?

10:29AM 1 A They were there.

10:29AM 2 Q So it was something -- the initial discussion then was
10:29AM 3 between you and Norman Akau and Kurt Kipapa, Jr.?

10:29AM 4 A For the most part, but it was Norman who started the
10:29AM 5 conversation.

10:29AM 6 Q And you became an informant in May 2017, right?

10:29AM 7 A I believe so.

10:29AM 8 Q You had meetings with the ATF, the first one I guess was
10:29AM 9 in October 2016?

10:29AM 10 A Mmm, I believe so.

10:29AM 11 Q After the car rental?

10:29AM 12 A Right.

10:29AM 13 Q And then about a month and a half after the Ginza
10:29AM 14 situation you met with them again?

10:29AM 15 A Correct.

10:29AM 16 Q And then about a month after that you became -- signed an
10:30AM 17 informant agreement?

10:30AM 18 A I believe so.

10:30AM 19 Q And then after you signed your informant agreement, you
10:30AM 20 met with them periodically?

10:30AM 21 A Occasionally, yes.

10:30AM 22 Q To provide information?

10:30AM 23 A Correct.

10:30AM 24 Q Because you were an informant?

10:30AM 25 A Correct.

10:30AM 1 Q And you -- well, let's see.

10:30AM 2 MS. PANAGAKOS: Can we show Ms. Akau Exhibit 9000-033.

10:30AM 3 It's not in evidence, just for the Court and the parties and

10:30AM 4 the witness.

10:30AM 5 BY MS. PANAGAKOS:

10:31AM 6 Q Ms. Akau, is this the informant agreement you signed?

10:31AM 7 A Yes, it is.

10:31AM 8 Q And it's dated May 15, 2017?

10:31AM 9 A Correct.

10:31AM 10 MS. PANAGAKOS: Let me see. Your Honor, I apologize,

10:31AM 11 this is on the tenth supplemental exhibit list.

10:31AM 12 THE COURT: Go ahead.

10:31AM 13 MS. PANAGAKOS: Can we highlight paragraph 1, please?

10:31AM 14 BY MS. PANAGAKOS:

10:31AM 15 Q So in this agreement you voluntarily agree to provide

10:31AM 16 information regarding Jacob Smith and his associates and their

10:32AM 17 involvement in criminal enterprise?

10:32AM 18 A Correct.

10:32AM 19 Q And Mr. Smith's and his associates criminal enterprise?

10:32AM 20 A Correct.

10:32AM 21 MS. PANAGAKOS: And then can we highlight paragraph 2,

10:32AM 22 please?

10:32AM 23 BY MS. PANAGAKOS:

10:32AM 24 Q And Special Agent Gary Graham, he was your controlling

10:32AM 25 agent, right?

10:32AM 1 A Correct.

10:32AM 2 Q And then you also in this agreement agreed not to commit
10:32AM 3 any illegal activity, right?

10:32AM 4 A Correct.

10:32AM 5 Q And not to engage in any destruction of evidence?

10:32AM 6 A Correct.

10:32AM 7 Q And to notify ATF of any acts of violence?

10:32AM 8 A Correct.

10:32AM 9 Q And your motivation for becoming an informant was

10:33AM 10 initially to get -- seek consideration from the government with
10:33AM 11 regard to your involvement in the Kalihi post office shooting,
10:33AM 12 correct?

10:33AM 13 A Sorry, say that again?

10:33AM 14 Q Your initial motivation to become an informant was to seek
10:33AM 15 consideration from the government regarding your involvement in
10:33AM 16 the shooting that occurred near the Kalihi post office on
10:33AM 17 October 13, 2016?

10:33AM 18 A Correct.

10:33AM 19 Q And then ultimately --

10:33AM 20 MS. PANAGAKOS: We can take that down.

10:33AM 21 BY MS. PANAGAKOS:

10:33AM 22 Q Ultimately you did receive favorable consideration. You
10:33AM 23 received an agreement from the government not to charge you
10:33AM 24 with that offense?

10:33AM 25 A Correct.

10:33AM 1 MR. NAMMAR: Objection. Misstates the plea agreement.

10:33AM 2 THE COURT: You can cross on that --

10:33AM 3 MS. PANAGAKOS: Thank you, Your Honor.

10:33AM 4 MR. NAMMAR: -- when you do your redirect.

10:33AM 5 Go ahead.

10:34AM 6 MS. PANAGAKOS: Can we turn, Ms. King, to

10:34AM 7 Exhibit 9000-020, and show this to Ms. Akau. It's not in

10:34AM 8 evidence.

10:34AM 9 BY MS. PANAGAKOS:

10:34AM 10 Q This is a copy of your memorandum of plea agreement. Do

10:34AM 11 you see that?

10:34AM 12 A Yes.

10:34AM 13 MS. PANAGAKOS: And can we turn to page 2 and

10:34AM 14 highlight paragraph 4 and the heading, the agreement.

10:34AM 15 BY MS. PANAGAKOS:

10:34AM 16 Q So the agreement -- this is your agreement, right?

10:34AM 17 A Correct.

10:34AM 18 Q And it says that you agree to plead guilty to the release

10:34AM 19 of what you believed to be mace or pepper spray at Ginza

10:34AM 20 Nightclub, right?

10:34AM 21 A Correct.

10:34AM 22 MS. PANAGAKOS: And then can we look at the bottom --

10:34AM 23 the sentence that begins on the bottom of page 4 and then

10:34AM 24 continues on to page 5?

10:35AM 25 I'm sorry, I'm sorry. I mean the bottom of page 2,

10:35AM 1 paragraph 4.

10:35AM 2 BY MS. PANAGAKOS:

10:35AM 3 Q And in exchange for your guilty plea, the government

10:35AM 4 agrees not to charge you with any additional offenses --

10:35AM 5 MS. PANAGAKOS: Can we turn to page 3?

10:35AM 6 BY MS. PANAGAKOS:

10:35AM 7 Q -- with regard to the release of chemicals in the Ginza

10:35AM 8 Nightclub, and also not to charge you with any offenses related

10:35AM 9 to robberies in which you participated to the extent you

10:35AM 10 disclosed those robberies -- okay. I guess it doesn't have

10:35AM 11 that.

10:35AM 12 But ultimately you weren't charged with anything

10:35AM 13 related to the -- the Kalihi post office shooting?

10:35AM 14 A Right, because I had nothing to do with that.

10:35AM 15 Q You were not charged with that.

10:35AM 16 A No.

10:35AM 17 Q And you were not charged -- that car was also used with --

10:35AM 18 in Jarrin Young's robbery of Eric Lum, right?

10:36AM 19 A So I've heard, yes.

10:36AM 20 Q And that was done by Jarrin Young and Jake Smith?

10:36AM 21 THE COURT REPORTER: I need you to slow down,

10:36AM 22 Ms. Panagakos.

10:36AM 23 MS. PANAGAKOS: Yes, Ms. Bediamol. I apologize.

10:36AM 24 BY MS. PANAGAKOS:

10:36AM 25 Q The Chrysler you rented was also used by Jarrin Young in

10:36AM 1 the robbery of Eric Lum, correct?

10:36AM 2 A I believe so.

10:36AM 3 Q And do you know who participated in that with Jarrin

10:36AM 4 Young?

10:36AM 5 A I believe it might have been Jake Smith. I don't recall.

10:36AM 6 Q And so the government in its plea agreement agreed not to

10:36AM 7 charge you with that robbery either.

10:36AM 8 A Well, I had nothing to do with that robbery.

10:36AM 9 Q You rented a car and provided it to Jake Smith, and it was

10:36AM 10 used in the commission of crimes, correct?

10:36AM 11 A Correct.

10:36AM 12 Q Now, it was your cousin Norman Akau who asked you to rent

10:36AM 13 the car for Jake Smith, right?

10:36AM 14 A Correct.

10:36AM 15 Q And when you spoke to the ATF on April 28, 2017, you lied

10:37AM 16 about that and said it was not your cousin, right?

10:37AM 17 A Well, at that time I didn't know if he was my cousin or

10:37AM 18 not. Later I found out he was.

10:37AM 19 Q But you didn't -- you lied and said it was not -- well,

10:37AM 20 your father was there during your interview on April 28, 2017,

10:37AM 21 right?

10:37AM 22 A Correct.

10:37AM 23 Q And he knew that Norman Akau was his cousin, correct?

10:37AM 24 A I'm not so sure if he knew at that time. You have to do

10:37AM 25 some digging. All of us are related.

10:37AM 1 Q On April 28, 2017, when you were interviewed you were

10:37AM 2 asked about the circumstances of the rental car, correct?

10:37AM 3 A Correct.

10:37AM 4 Q And that interview was recorded?

10:38AM 5 A Correct.

10:38AM 6 MS. PANAGAKOS: So I'd like to show Ms. Akau

10:38AM 7 Exhibit 9000-31.

10:38AM 8 BY MS. PANAGAKOS:

10:38AM 9 Q And this is a transcript of your recorded interview.

10:38AM 10 MS. PANAGAKOS: And I would like to direct Ms. Akau's

10:38AM 11 attention to page 26, line 22 through 25.

10:38AM 12 And this is on the sixth supplemental exhibit list.

10:39AM 13 THE COURT: Yes, I have it now.

10:39AM 14 BY MS. PANAGAKOS:

10:39AM 15 Q And so when you were asked about this on April 28, 2017,

10:39AM 16 Ms. Akau, your answer was: "Well, my cousin -- well, this guy

10:39AM 17 called me to rent the car, he is not our cousin, and then I

10:39AM 18 rented the car and then it was Jake's use."

10:39AM 19 Do you see that?

10:39AM 20 A Yes, I do.

10:39AM 21 Q And that's what you told the -- the agents that day?

10:39AM 22 A That day I did.

10:39AM 23 Q And you didn't say it was Norman Akau?

10:39AM 24 A Not in this -- I'm not too sure if it says it in this when

10:39AM 25 I talked to them, but in this particular part, it does not.

10:39AM 1 Q And you said, "My cousin -- well, not my cousin -- well, a
10:39AM 2 guy" in front of your father?
10:39AM 3 A Right.
10:39AM 4 Q And failed to disclose who it was?
10:39AM 5 A At the time, yes.
10:39AM 6 Q Now, when you were interviewed in October 2016, Agent
10:40AM 7 Graham contacted you?
10:40AM 8 A Okay.
10:40AM 9 Q Well, he -- I mean you got to know him, he was your
10:40AM 10 handler, right?
10:40AM 11 A Right.
10:40AM 12 Q And so he was the guy who came the first time to talk with
10:40AM 13 you, right?
10:40AM 14 A Correct.
10:40AM 15 Q And others were there as well?
10:40AM 16 A Correct.
10:40AM 17 Q Do you remember who any of the other agents were?
10:40AM 18 A I don't remember. There was two others.
10:40AM 19 Q One was Ty Torco?
10:40AM 20 A Sorry?
10:40AM 21 Q Was one of them Ty Torco?
10:40AM 22 A I'm -- if you're telling me it is, then yes. I don't
10:40AM 23 recall their names.
10:40AM 24 Q And they asked you who you rented the car for?
10:40AM 25 A Correct.

10:40AM 1 Q And they asked you if you were aware that it had been used
10:40AM 2 in a shooting?
10:40AM 3 A Correct.
10:40AM 4 Q And you told them -- you did not disclose who you rented
10:40AM 5 the car for?
10:40AM 6 A Right.
10:40AM 7 Q And you denied knowledge that it had been used in a
10:40AM 8 shooting?
10:40AM 9 A Correct.
10:40AM 10 Q But -- but Mr. Smith had called you minutes after the
10:40AM 11 shooting to inform you that it was in fact used in a shooting?
10:41AM 12 A Correct.
10:41AM 13 Q So you lied to the agents that day.
10:41AM 14 A I did.
10:41AM 15 Q And then after you became -- well, before becoming an
10:41AM 16 informant, your father, you spoke with him about it, right?
10:41AM 17 A Spoke with him about?
10:41AM 18 Q Becoming an informant.
10:41AM 19 A I don't recall.
10:41AM 20 Q You recall that your father came with you to the
10:41AM 21 meeting --
10:41AM 22 A Oh, yes, I did talk to him about it.
10:41AM 23 Q Right. And your father is the one who told you about a
10:41AM 24 traffic stop where a bottle of Jagermeister had --
10:41AM 25 MR. NAMMAR: Objection. Hearsay.

10:41AM 1 THE COURT: Overruled. Go ahead.

10:41AM 2 THE WITNESS: Sorry, can you repeat that?

10:41AM 3 BY MS. PANAGAKOS:

10:41AM 4 Q Your father is the one who told you about Jake Smith
10:41AM 5 having been involved in a traffic stop and his backpack being
10:42AM 6 seized, the Gucci bag that you recognized?

10:42AM 7 A Okay. I believe so.

10:42AM 8 Q And did your father tell you that he learned that
10:42AM 9 information from Terrence Chu?

10:42AM 10 A I don't recall.

10:42AM 11 Q You don't recall -- you're aware that your father was
10:42AM 12 acquainted with Homeland Security Investigations Special Agent
10:42AM 13 Terrence Chu prior to your April 28, 2017, meeting with the
10:42AM 14 agents, right?

10:42AM 15 A I don't recall, but if you're telling me, then I'm sure.

10:42AM 16 Q Well, it was your father who got you to go to that
10:42AM 17 meeting, right?

10:42AM 18 A Right.

10:42AM 19 Q So how did this come to the attention of your father?

10:42AM 20 A How did what -- how did the backpack?

10:42AM 21 Q The -- well, yes, for one the backpack.

10:42AM 22 A I'm not sure. He has a lot of friends.

10:42AM 23 Q And your father -- I mean you're aware that Terrence Chu
10:42AM 24 contacted your father and told him that law enforcement wanted
10:42AM 25 to speak with you?

10:42AM 1 A Well, I don't recall if it was Terrence Chu, but I know
10:42AM 2 they were talking to me about it, yes.

10:43AM 3 Q You're -- you're aware law enforcement contacted your
10:43AM 4 father.

10:43AM 5 A I don't recall if they contacted him through me or
10:43AM 6 whatnot. It was a long time ago. I don't recall.

10:43AM 7 Q You know that your father has been an informant in the
10:43AM 8 past?

10:43AM 9 A Correct.

10:43AM 10 Q And so did he talk with you about the benefits of becoming
10:43AM 11 an informant?

10:43AM 12 A Yes.

10:43AM 13 Q And he had gotten huge breaks on his sentences by being an
10:43AM 14 informant?

10:43AM 15 MR. NAMMAR: Objection. Relevance.

10:43AM 16 THE COURT: Sustained.

10:43AM 17 BY MS. PANAGAKOS:

10:43AM 18 Q So are you aware of who your father had relationships with
10:43AM 19 in law enforcement as a result of being an informant?

10:43AM 20 A No, I was not aware.

10:43AM 21 Q Is your father the one who arranged for you to meet with
10:43AM 22 law enforcement on April 28, 2017?

10:43AM 23 A I don't recall. I don't recall if it was him or I.

10:43AM 24 Q Did you ask him to go with you?

10:43AM 25 A Yes, I did.

10:43AM 1 Q And you know that your father had robbed drug dealers
10:44AM 2 before.

10:44AM 3 MR. NAMMAR: Objection. Relevance.

10:44AM 4 THE COURT: Sustained.

10:44AM 5 BY MS. PANAGAKOS:

10:44AM 6 Q And so during your April 28, 2017, interview, you were
10:44AM 7 asked if you committed any robberies with Jacob Smith.

10:44AM 8 A Correct.

10:44AM 9 Q And you said no.

10:44AM 10 A Correct.

10:44AM 11 Q And that was a lie.

10:44AM 12 A Correct.

10:44AM 13 Q And you asked them if you had -- they asked you if you had
10:44AM 14 provided all disclosure of your knowledge of all of Jacob
10:44AM 15 Smith's activities.

10:44AM 16 A Correct.

10:44AM 17 Q And you said you had.

10:44AM 18 A Correct.

10:44AM 19 Q And that was a lie.

10:44AM 20 A Correct.

10:44AM 21 Q So these Jagermeister bottles, I mean it's just like a
10:44AM 22 Diet Coke, I mean, you know, any one looks like the other,
10:45AM 23 right? I mean if you see a picture of a Jagermeister bottle, a
10:45AM 24 month and a half after you testified you used a Jagermeister
10:45AM 25 bottle in a club, I mean how can -- the picture is just of a

10:45AM 1 Jagermeister bottle that you saw a month and a half later?

10:45AM 2 MR. NAMMAR: Objection. Confusing.

10:45AM 3 THE COURT: I'm not sure I understand the question.

10:45AM 4 If the witness does, she may answer.

10:45AM 5 THE WITNESS: I don't understand the question as well.

10:45AM 6 MS. PANAGAKOS: I believe it's 6-26, the photo of the

10:45AM 7 Jagermeister bottle that was in -- that is in evidence is what

10:45AM 8 I'm --

10:45AM 9 THE COURT: It is.

10:45AM 10 MS. PANAGAKOS: May I publish that?

10:45AM 11 THE COURT: Yes.

10:45AM 12 BY MS. PANAGAKOS:

10:45AM 13 Q So this is a photo of a Jagermeister bottle.

10:45AM 14 A Correct.

10:45AM 15 Q And your father told you about the circumstances of seeing

10:46AM 16 this photograph.

10:46AM 17 MR. NAMMAR: Objection. Asked and answered.

10:46AM 18 THE COURT: Overruled. Go ahead. You may answer that

10:46AM 19 question.

10:46AM 20 THE WITNESS: Sorry, repeat your question again.

10:46AM 21 BY MS. PANAGAKOS:

10:46AM 22 Q Your father told you about the circumstances of this

10:46AM 23 photograph that you saw on April 28, 2017, right?

10:46AM 24 A Can you rephrase that?

10:46AM 25 Q Sometime -- so the Ginza incident occurred on March 5th.

10:46AM 1 A Correct.

10:46AM 2 Q And then sometime in April you got a call from Jacob

10:46AM 3 Smith.

10:46AM 4 A Correct.

10:46AM 5 Q And he asked you if you had talked to anyone.

10:46AM 6 A Okay.

10:46AM 7 Q And he said he -- he thought he could trust you not to

10:46AM 8 talk, right?

10:46AM 9 A Okay.

10:46AM 10 Q And then he indicated that he was going to follow up on

10:46AM 11 this conversation in person.

10:46AM 12 A I don't recall.

10:47AM 13 MS. PANAGAKOS: Can we please show Ms. Akau

10:47AM 14 Exhibit 9000-31, page 5?

10:47AM 15 THE COURT: Go ahead.

10:47AM 16 MS. PANAGAKOS: I'm sorry, if we could go to page 4,

10:47AM 17 at the bottom, line 24.

10:47AM 18 BY MS. PANAGAKOS:

10:47AM 19 Q And, Ms. Akau, if you could read from line 24, and then on

10:47AM 20 to the next page, line 14.

10:47AM 21 A (Peruses document.)

10:48AM 22 Q And have you read -- let me know when you've read that,

10:48AM 23 please.

10:48AM 24 A Yes.

10:48AM 25 Q So it was your dad who told you what had happened with

10:48AM 1 regard to Jake Smith's traffic stop.

10:48AM 2 A Correct, that's what it says there.

10:48AM 3 Q And then at this meeting you were then shown photographs

10:48AM 4 of items that your father had told you had been seized from the

10:48AM 5 traffic stop.

10:48AM 6 A Correct.

10:48AM 7 Q Okay. And you recognize the Gucci bag because that is

10:48AM 8 distinctive?

10:48AM 9 A Correct.

10:48AM 10 Q But a Jagermeister bottle -- I mean a Jagermeister

10:48AM 11 miniature bottle is -- I mean any one looks just like another,

10:48AM 12 they're mass produced, right?

10:48AM 13 A Correct.

10:48AM 14 Q So you don't know anything about the -- where the

10:48AM 15 Jagermeister bottle in the photograph that you saw on

10:48AM 16 April 27 -- on April 28, 2017, had actually been. You have no

10:49AM 17 personal knowledge of that. You just saw a photograph that

10:49AM 18 day.

10:49AM 19 A Correct.

10:49AM 20 Q Now, with regard to the April 28, 2007 -- I'm sorry, the

10:49AM 21 incident at Ginza, you and Jacob Smith drove to a house in

10:49AM 22 Waimanalo?

10:49AM 23 A Correct.

10:49AM 24 Q And then in your first recorded statement you said he came

10:49AM 25 out with a McDonald's cup with two things wrapped in paper

10:49AM 1 towels inside the cup.

10:49AM 2 A Right.

10:49AM 3 Q And so then you took one of them because you went into the

10:49AM 4 club with it.

10:49AM 5 A Correct. It was the Jagermeister bottle.

10:49AM 6 Q Correct.

10:49AM 7 A Correct.

10:49AM 8 Q Did you actually even unwrap the other item? It was

10:49AM 9 wrapped in a paper towel inside a cup, did you --

10:49AM 10 A Yeah, I looked at both of them.

10:49AM 11 Q You did?

10:49AM 12 A Correct.

10:49AM 13 Q Okay. And then you weren't ordered to do anything by

10:49AM 14 Mike. Jake Smith asked you to do this and you agreed, right?

10:49AM 15 A Correct.

10:49AM 16 Q And you understood the purpose of this to be to cause

10:50AM 17 people to leave the club?

10:50AM 18 A Correct.

10:50AM 19 Q And that's what you agreed to do, pour some chemical on

10:50AM 20 the floor that you believed to be pepper spray or mace that

10:50AM 21 would cause people to get irritated eyes and cough and have

10:50AM 22 enough difficulty breathing to move away from the substance.

10:50AM 23 A Correct.

10:50AM 24 Q You did not intend to ever put that bottle on anybody

10:50AM 25 else's body other than your own.

10:50AM 1 A Correct.

10:50AM 2 Q And the only lasting period of time issue you had was as a
10:50AM 3 result of your choice to put it on your body.

10:50AM 4 A Correct.

10:50AM 5 Q You did not intend to physically hurt anybody by pouring
10:50AM 6 some chemical on the floor that day.

10:50AM 7 A Correct.

10:50AM 8 Q You just intended for people to leave.

10:50AM 9 A Correct.

10:50AM 10 Q You certainly didn't intend to cause severe harm to many
10:50AM 11 people.

10:50AM 12 A Correct.

10:50AM 13 Q You would never have done something like that.

10:51AM 14 A Correct.

10:51AM 15 Q And the -- you never spoke to Michael Miske that day?

10:51AM 16 A No, I did not.

10:51AM 17 Q The only person you spoke to about this was Jake Smith.

10:51AM 18 A Correct.

10:51AM 19 Q And in fact, even Jake Smith was kind of jealous, right?
10:51AM 20 He kept you away, he didn't want you to talk to other people
10:51AM 21 outside of him.

10:51AM 22 A Correct.

10:51AM 23 Q So your knowledge of Mr. Smith's relationship with Mike
10:51AM 24 Miske comes exclusively from Jake Smith.

10:51AM 25 A Correct.

10:51AM 1 Q And the only thing that Jake Smith ever told you -- of the
10:51AM 2 things that Jake Smith asked you to do, the only one that he
10:51AM 3 ever said was something that Mike asked him to do was the
10:51AM 4 incident at the Ginza.

10:51AM 5 A Sorry, can you say that one more time?

10:51AM 6 Q Jake Smith didn't tell you that the robbery of Palani
10:51AM 7 Mitchell was something that Mike -- Mike Miske asked him to do.

10:52AM 8 A Correct.

10:52AM 9 Q Jake Smith didn't tell you that renting the Chrysler was
10:52AM 10 something that Mike Miske asked you to do.

10:52AM 11 A Correct.

10:52AM 12 Q Jake Smith didn't tell you that Mike Miske had asked Dae
10:52AM 13 Han Moon to shoot out of the car.

10:52AM 14 A Correct.

10:52AM 15 Q Jake Smith never told you that Mike Miske asked him to
10:52AM 16 have Jarrin Young use the car to rob Eric Lum.

10:52AM 17 A Correct.

10:52AM 18 Q And to your knowledge, Mike Miske had absolutely nothing
10:52AM 19 to do with any of those things.

10:52AM 20 A To my knowledge.

10:52AM 21 Q So what is your relationship with Kurt Kipapa, Jr.?

10:52AM 22 A We're -- we're friends.

10:52AM 23 Q And did you know him prior to the day when he and Norm
10:52AM 24 approached you about the robbery of Nicolas Carignan?

10:52AM 25 A I didn't know him personally, but I knew of him.

10:52AM 1 Q Well, which one were you better acquainted with when the
10:52AM 2 two approached you?
10:52AM 3 A I didn't meet any of them in person before they approached
10:52AM 4 me.
10:52AM 5 Q So you're at The Shack Kailua --
10:52AM 6 A Yes.
10:52AM 7 Q -- drinking?
10:52AM 8 A I was outside in the parking lot.
10:53AM 9 Q Had you been drinking inside?
10:53AM 10 A I believe we just got there not too long --
10:53AM 11 Q "We" who?
10:53AM 12 A Me and my sister-in-law.
10:53AM 13 Q And did your sister-in-law know these people?
10:53AM 14 A I don't believe so. Maybe she knew Kurt, but we didn't
10:53AM 15 really talk about it.
10:53AM 16 Q So people you don't know just walked up to you and asked
10:53AM 17 you if you could set up Nicholas Carignan for 5-pound bags?
10:53AM 18 A Yes.
10:53AM 19 Q And you -- when did you come to know him as Kurty Boy?
10:53AM 20 A Not far after. I don't recall.
10:53AM 21 Q So do you recall, you know, you were seeking favorable
10:53AM 22 consideration? That's why you became an informant.
10:53AM 23 A Yes.
10:53AM 24 Q And do you recall that shortly after -- like about a month
10:53AM 25 after becoming an informant, you actually met with not only

10:53AM 1 agents but a prosecutor, Chris Thomas? Not one of these guys

10:53AM 2 but a different prosecutor.

10:53AM 3 A I believe so.

10:53AM 4 Q And you know that agents write reports about, you know, to

10:54AM 5 document what you say --

10:54AM 6 A Yes.

10:54AM 7 Q -- and what your work is as an informant?

10:54AM 8 MS. PANAGAKOS: I'd like to show Ms. Akau

10:54AM 9 Exhibit 9000-003, which is on the original list.

10:54AM 10 If we could go to page -- the second page of this

10:54AM 11 exhibit, please.

10:54AM 12 BY MS. PANAGAKOS:

10:54AM 13 Q And this is a memorandum of their contact with you, Chris

10:54AM 14 Thomas, Gary Graham and Ty Torco, on June 16, 2017.

10:54AM 15 MS. PANAGAKOS: And then if we can turn to the third

10:54AM 16 page. And if we could highlight from the top of this page all

10:54AM 17 the way down to the -- yeah, let me see.

10:54AM 18 BY MS. PANAGAKOS:

10:55AM 19 Q So if you could read the first paragraph.

10:55AM 20 A (Peruses document.) Okay.

10:55AM 21 Q And does this remind you that Kurty Boy is actually the

10:55AM 22 one who approached you and Norman Akau?

10:55AM 23 A Well, it was both of them --

10:55AM 24 Q Both of them.

10:55AM 25 A -- as previously stated.

10:55AM 1 Q Okay. Both of them of them together approached you?

10:55AM 2 A Well, Norman talked to me first.

10:55AM 3 Q Okay. And you knew Kurt Kipapa, Jr., to be a member of

10:55AM 4 Nakipi?

10:55AM 5 A I don't recall if at that time I knew. I understood -- I

10:55AM 6 don't recall if they were part of a motorcycle gang.

10:55AM 7 Q All right. But by the time of this interview you were

10:55AM 8 aware of this, right?

10:55AM 9 A Yes.

10:55AM 10 Q And you were -- it was your understanding that the robbery

10:55AM 11 of Nicholas Carignan had been done by members of the Nakipi

10:56AM 12 Motorcycle Club?

10:56AM 13 A Correct.

10:56AM 14 Q Kurt Kipapa, Jr., you understood to be a member of the

10:56AM 15 Nakipi Motorcycle Club.

10:56AM 16 A Correct.

10:56AM 17 Q Norman Akau, your cousin, you understood to be a member of

10:56AM 18 Nakipi Motorcycle Club.

10:56AM 19 A Correct.

10:56AM 20 Q Harry Kauhi you understood to be a member of the Nakipi

10:56AM 21 Motorcycle Club.

10:56AM 22 A Correct.

10:56AM 23 Q Did you at the time that you met with Chris Thomas

10:56AM 24 understand that to be the case?

10:56AM 25 A I don't recall.

10:56AM 1 Q Does this report of your interview help refresh your
10:56AM 2 recollection?
10:56AM 3 A Yes.
10:56AM 4 Q Yes?
10:56AM 5 A Yes.
10:56AM 6 Q So how did you come to learn about Nakipi Motorcycle Club?
10:56AM 7 A I think they were always around. After this I realized
10:56AM 8 that they were part -- that Norman was the president of some
10:56AM 9 kind of motorcycle club.
10:56AM 10 Q And did you understand Norman to have a relationship with
10:57AM 11 Jacob Smith?
10:57AM 12 A Yes.
10:57AM 13 Q What was that?
10:57AM 14 A Honestly, I'm not too sure. I don't remember what their
10:57AM 15 relationship was, but I knew that they were close.
10:57AM 16 Q And are you aware that Norman knows Jacob Smith's father?
10:57AM 17 A I believe so.
10:57AM 18 Q So their relationship is independent of Mr. Miske.
10:57AM 19 A Correct.
10:57AM 20 Q And it was when you -- so you set up Nicholas Carignan.
10:57AM 21 A Correct.
10:57AM 22 Q And this -- you know, he brings the 5 pounds, puts it in
10:57AM 23 the trunk, and you pop the trunk when you get there so that the
10:57AM 24 guys can steal it, right?
10:57AM 25 A After awhile, yes.

10:57AM 1 Q And it was Norman Akau who brought Jacob Smith to this?

10:57AM 2 A I believe so, yes.

10:57AM 3 Q Because of their relationship?

10:57AM 4 A I believe so.

10:57AM 5 MS. PANAGAKOS: We can take this down, Ms. King.

10:57AM 6 BY MS. PANAGAKOS:

10:58AM 7 Q So you are aware that Jacob Smith got arrested and held in
10:58AM 8 custody at the Federal Detention Center in about August of
10:58AM 9 2018, right?

10:58AM 10 A I believe so, yes.

10:58AM 11 Q And Mr. Miske's arrest wasn't until two years later.

10:58AM 12 A Okay.

10:58AM 13 Q You were aware before Mr. Miske's arrest that Mr. Smith
10:58AM 14 was cooperating.

10:58AM 15 A I don't recall if he told me he was cooperating or not.

10:58AM 16 Q You don't recall email communications, telephone
10:58AM 17 communications where he told you he was cooperating, and you
10:58AM 18 relayed that information to the agents?

10:58AM 19 A I don't recall.

10:59AM 20 MS. PANAGAKOS: Can we show Ms. Akau Exhibit 9000-013,
10:59AM 21 which is on the original list.

10:59AM 22 BY MS. PANAGAKOS:

10:59AM 23 Q You became an actual numbered CI because you had -- you
10:59AM 24 know, you had an informant agreement that went through the
10:59AM 25 approval process and you got a number. You were an informant

10:59AM 1 for about five years, right?

10:59AM 2 A Correct.

10:59AM 3 Q And this is a memorandum of your contact with -- with your
10:59AM 4 handler Gary Graham on May 3rd, 2019. And does this refresh
10:59AM 5 your recollection that Smith had told you he was cooperating?

10:59AM 6 A Yes.

10:59AM 7 Q And it was at this time -- and he also told you, Do what
10:59AM 8 you have to do. They will probably come talk to you, do what
10:59AM 9 you have to do.

11:00AM 10 MR. NAMMAR: Objection to her reading from the report.

11:00AM 11 THE COURT: Sustained.

11:00AM 12 BY MS. PANAGAKOS:

11:00AM 13 Q Does this refresh your recollection as to communications
11:00AM 14 you had with Mr. Smith while he was in FDC in the April, May
11:00AM 15 2019 time frame?

11:00AM 16 A Yes.

11:00AM 17 MS. PANAGAKOS: And then can we show Ms. Akau
11:00AM 18 Exhibit 9000-014?

11:00AM 19 BY MS. PANAGAKOS:

11:00AM 20 Q This is a memorandum of a June 18, 2019, contact between
11:00AM 21 you and your handler Special Agent Gary Graham. And here, if
11:00AM 22 you would read this to yourself paragraph -- read the entire
11:01AM 23 thing to yourself. And let me know when you are done.

11:01AM 24 A (Peruses document.) Okay. I'm finished.

11:01AM 25 Q Okay. So now do you recall that for at least the

11:01AM 1 two-month period of April through June of 2019, you were having
11:02AM 2 conversations with Mr. Smith about his cooperation?
11:02AM 3 A Correct.
11:02AM 4 Q So you were aware by the time of Mr. Miske's arrest in
11:02AM 5 2020 that Mr. Smith was a cooperating witness.
11:02AM 6 A Correct.
11:02AM 7 Q And you were aware of Mr. Smith's agenda to "fuck Mike"?
11:02AM 8 A Well, that's what it states here.
11:02AM 9 Q And that's what you told the agents on June 18, 2019,
11:02AM 10 correct?
11:02AM 11 A Correct.
11:02AM 12 Q And so what Mr. Smith actually told you after Mike had
11:02AM 13 been arrested is that he was blaming everything on Mike and
11:02AM 14 Johnnie. Not for you to tell on him. He didn't need -- I mean
11:02AM 15 they already had him, he was already cooperating.
11:02AM 16 A I don't recall.
11:03AM 17 MS. PANAGAKOS: I'd like to show Ms. Akau
11:03AM 18 Exhibit 9000-016.
11:03AM 19 BY MS. PANAGAKOS:
11:03AM 20 Q Please read that to yourself and let -- let us know when
11:03AM 21 you're finished.
11:03AM 22 MS. PANAGAKOS: This is not the correct -- oh, yes, it
11:03AM 23 is.
11:03AM 24 BY MS. PANAGAKOS:
11:03AM 25 Q Direct your attention specifically to paragraph 2.

11:03AM 1 A (Peruses document.) Okay.

11:03AM 2 Q And so after Mr. Miske was arrested, what Smith told you
11:03AM 3 was that he was blaming everything on Mike and Johnnie, right?

11:04AM 4 A That's what it says.

11:04AM 5 Q And it was in that context that he was coaching you on
11:04AM 6 what to say to the feds, right?

11:04AM 7 A That's what it says, yes.

11:04AM 8 Q And this is a report of what you told the agents on
11:04AM 9 August 6, 2020, right?

11:04AM 10 A Okay.

11:04AM 11 MS. PANAGAKOS: So can we take that down, please?

11:04AM 12 BY MS. PANAGAKOS:

11:04AM 13 Q And so you signed informant agreements over the course of
11:04AM 14 your work as an informant. Pretty much like every year you
11:04AM 15 would sign a new agreement, right?

11:04AM 16 A Correct.

11:04AM 17 Q So the first one we saw was in May of 2017, and the
11:04AM 18 purpose was to provide information regarding Jacob Smith along
11:05AM 19 with his associates and their involvement in their criminal
11:05AM 20 enterprise, right?

11:05AM 21 A Yes.

11:05AM 22 MS. PANAGAKOS: And then if we could show Ms. Akau
11:05AM 23 Exhibit 9000-038, which is on the tenth supplemental exhibit
11:05AM 24 list.

11:05AM 25 BY MS. PANAGAKOS:

11:05AM 1 Q This is now you're being renewed, I guess, as a continued
11:05AM 2 confidential informant, and you sign -- this agreement is
11:05AM 3 signed on January 5th by you and 8th by the agents of 2018,
11:05AM 4 right?

11:05AM 5 A Correct.

11:05AM 6 Q And again, the purpose is to provide information regarding
11:05AM 7 Jacob Smith along with his associates and their involvement in
11:05AM 8 their criminal enterprise.

11:05AM 9 A Correct.

11:05AM 10 Q And so it was on -- in November of 2017 that Mr. Smith
11:06AM 11 called you and asked you to come pick him up after someone had
11:06AM 12 been stabbed.

11:06AM 13 A Correct.

11:06AM 14 Q And your testimony is you went because you wanted to
11:06AM 15 render aid to the person who had been stabbed.

11:06AM 16 A Correct.

11:06AM 17 Q And you didn't do so.

11:06AM 18 A Correct.

11:06AM 19 Q You learned from Mr. Smith that that person had died?

11:06AM 20 A When they jumped in the car, yes.

11:06AM 21 Q And you didn't call the cops to report a stabbing.

11:06AM 22 A The cops were already there.

11:06AM 23 Q And you didn't tell the agents about Mr. Smith's
11:06AM 24 involvement in this stabbing.

11:06AM 25 A Well, at that point I had no idea what his involvement

11:06AM 1 was.

11:06AM 2 Q But you had an agreement to voluntarily provide

11:06AM 3 information to the agents about Mr. Smith.

11:06AM 4 A Correct.

11:06AM 5 Q And you chose not to provide this information.

11:06AM 6 MR. NAMMAR: Objection. Misstates the testimony.

11:06AM 7 THE COURT: Overruled. Go ahead.

11:06AM 8 BY MS. PANAGAKOS:

11:06AM 9 Q You choose not to provide this information to your ATF

11:06AM 10 handler for 11 months.

11:06AM 11 A That I didn't -- that I picked him up, yes, I didn't tell

11:07AM 12 him I picked him up.

11:07AM 13 Q You didn't tell him you picked him up after a stabbing.

11:07AM 14 A Correct.

11:07AM 15 Q That he had been involved in a stabbing and didn't make

11:07AM 16 statements to the police.

11:07AM 17 A Well, I didn't know his involvement.

11:07AM 18 Q You didn't make a statement to the police --

11:07AM 19 A Correct.

11:07AM 20 Q -- about your involvement in picking people up in the

11:07AM 21 aftermath of it.

11:07AM 22 A Correct.

11:07AM 23 Q You didn't make a statement to the police about taking

11:07AM 24 custody of bags that were at the scene of the stabbing.

11:07AM 25 A Correct.

11:07AM 1 Q And you didn't tell your ATF handler about any of this
11:07AM 2 until October 2018.
11:07AM 3 A Okay.
11:07AM 4 Q And then after you told them, they did not -- no agent
11:07AM 5 reported a violation of your agreement.
11:08AM 6 A Okay.
11:08AM 7 Q And in fact, they renewed your agreement again in 2019.
11:08AM 8 A Okay.
11:08AM 9 Q Well, you do recall that they renewed your agreement,
11:08AM 10 right?
11:08AM 11 A Okay, yeah.
11:08AM 12 MS. PANAGAKOS: Can we show Ms. Akau Exhibit 9000-19,
11:08AM 13 page 0005?
11:08AM 14 BY MS. PANAGAKOS:
11:08AM 15 Q And you see that's an agreement dated March 8 -- March 13,
11:08AM 16 2019?
11:08AM 17 A Yes.
11:08AM 18 Q So your agreement was renewed with no consequence despite
11:08AM 19 your failure to report Mr. Smith's presence at a stabbing.
11:08AM 20 A Correct.
11:08AM 21 Q And his request that you keep custody of his bag and
11:08AM 22 someone else's bag for a period of time following the stabbing.
11:08AM 23 A Correct.
11:08AM 24 Q And you're giving aid in helping people leave the scene of
11:09AM 25 a crime when they were present during the stabbing.

11:09AM 1 A At the time I didn't realize, but yes.

11:09AM 2 Q You didn't realize when Mr. Smith called you and asked you
11:09AM 3 to come pick him up because your friend had been stabbed that
11:09AM 4 he had not -- didn't have personal knowledge of the fact that
11:09AM 5 this just happened?

11:09AM 6 A Well, I knew he had personal knowledge of it, but I didn't
11:09AM 7 know where he was at the time, what happened, if he was there
11:09AM 8 or what. I just knew that somebody was hurt and I wanted to go
11:09AM 9 help.

11:09AM 10 Q Okay. And then you failed to inform --

11:09AM 11 MR. NAMMAR: Objection. Asked and answered.

11:09AM 12 BY MS. PANAGAKOS:

11:09AM 13 Q -- police at the ATF.

11:09AM 14 THE COURT: Sustained.

11:09AM 15 BY MS. PANAGAKOS:

11:09AM 16 Q You testified about -- so even after the rental of the
11:09AM 17 Chrysler and its use in criminal activity, while you were an
11:10AM 18 informant you allowed Mr. Smith use of another car owned by
11:10AM 19 you.

11:10AM 20 A Correct.

11:10AM 21 Q And you didn't tell the ATF about that.

11:10AM 22 A Correct.

11:10AM 23 Q And you say on your direct testimony that you just wanted
11:10AM 24 to -- you wanted nothing more to do with him, that's why you
11:10AM 25 wanted the title?

11:10AM 1 A Eventually, yes.

11:10AM 2 MS. PANAGAKOS: Your Honor, we have on our tenth
11:10AM 3 supplemental exhibit list a long chat between Ms. Akau and
11:10AM 4 Mr. Smith, and that's 9000-043. I have marked an excerpt -- a
11:10AM 5 small excerpt of this chat 9000-043A. I've provided the Court
11:10AM 6 with an 11th supplemental list that lists this and copies of
11:10AM 7 the exhibit, and I have provided both documents to the
11:10AM 8 government.

11:11AM 9 THE COURT: Okay.

11:11AM 10 MS. PANAGAKOS: And so I would like to show Ms. Akau
11:11AM 11 Exhibit 9000-043A.

11:11AM 12 THE COURT: Okay, go ahead.

11:11AM 13 MS. PANAGAKOS: And can we highlight -- okay.

11:11AM 14 BY MS. PANAGAKOS:

11:11AM 15 Q And so, Ms. Akau, these are text messages. You recognize
11:11AM 16 your phone number, right, 358-1387?

11:11AM 17 A Correct.

11:11AM 18 Q And this is from Jake Smith's phone and you're identified
11:11AM 19 as Ash. This is an extraction from a phone that was seized
11:11AM 20 from Jake Smith when he was arrested. You didn't provide text
11:11AM 21 messages between you and Jake Smith while you were an informant
11:11AM 22 to the government, right?

11:11AM 23 A I don't believe so.

11:11AM 24 Q Okay. And so this one is related to the car title that
11:12AM 25 you had testified about on your direct examination, right?

11:12AM 1 A Correct.

11:12AM 2 MS. PANAGAKOS: Your Honor, I would move to admit this
11:12AM 3 exhibit.

11:12AM 4 MR. NAMMAR: No objection.

11:12AM 5 THE COURT: All right. Without objection -- and
11:12AM 6 you're going to file, I assume, the defense eleventh
11:12AM 7 supplemental exhibit list?

11:12AM 8 MS. PANAGAKOS: Yes, Your Honor.

11:12AM 9 THE COURT: Okay. And that's the one that contains
11:12AM 10 this particular exhibit?

11:12AM 11 MS. PANAGAKOS: Yes, Your Honor.

11:12AM 12 THE COURT: All right. Then without objection,
11:12AM 13 9000-43 alpha is admitted. You may publish.

11:12AM 14 (Exhibit 9000-043A was received in evidence.)

11:12AM 15 MS. PANAGAKOS: Is it on the screen?

11:12AM 16 THE COURT: It is.

11:12AM 17 MS. PANAGAKOS: Okay. Thank you, Your Honor.

11:12AM 18 BY MS. PANAGAKOS:

11:12AM 19 Q And so you're discussing the -- item number 1 is a text
11:12AM 20 from you to Mr. Smith, and you're saying here: "I'm going to
11:12AM 21 sign it over to Melissa because we need to cover our tracks, be
11:12AM 22 smarter about shit. Don't question my loyalty because IDK how
11:13AM 23 you expect me to have your back if I go down for some shit too.
11:13AM 24 And you want to put it in someone else's name."

11:13AM 25 You see that?

11:13AM 1 A Yes, I do.

11:13AM 2 Q And then in item 6, you're telling him: "It's just

11:13AM 3 smarter because that's a link to me. You don't want to have a

11:13AM 4 link between you and Smith while you're an informant."

11:13AM 5 A Right. I was basically trying to say anything to get the

11:13AM 6 car so I could cut ties with him.

11:13AM 7 Q And you say: "I'm trying to look out for us two and us

11:13AM 8 two only."

11:13AM 9 A Yeah, if that meant trying to convince him of that, then I

11:13AM 10 was trying to get the car back.

11:13AM 11 Q Okay. But you have an agreement with the FD -- with the

11:14AM 12 ATF to voluntarily provide information regarding Smith and you

11:14AM 13 didn't share this information.

11:14AM 14 A Correct.

11:14AM 15 Q And you actually didn't -- weren't trying to get away from

11:14AM 16 him after this or you changed your mind or something, right?

11:14AM 17 A Are you asking me?

11:14AM 18 Q I mean, you continued to be romantically involved with him

11:14AM 19 for months after this.

11:14AM 20 A After I got the car back?

11:14AM 21 Q Yes.

11:14AM 22 A I don't recall.

11:14AM 23 MS. PANAGAKOS: We can -- can we take down this

11:14AM 24 exhibit. And then if we can show the witness only 9000-043,

11:14AM 25 which is on the tenth supplemental exhibit list. And turn to

11:14AM 1 page 20.

11:14AM 2 And if we could begin highlighting from item 13 -- 313

11:15AM 3 for the witness to review.

11:15AM 4 And then let me know, please, when -- okay.

11:15AM 5 And then can we continue on down to 324. Highlighting

11:15AM 6 it. Thank you.

11:15AM 7 BY MS. PANAGAKOS:

11:15AM 8 Q And so you see these are texts between you and Mr. Smith

11:15AM 9 in April 2018, correct?

11:15AM 10 A Correct. I didn't get the car back.

11:15AM 11 Q Hmm?

11:15AM 12 A I still didn't get the car back.

11:15AM 13 Q Okay. So you're sleeping over in order to get the car

11:16AM 14 back?

11:16AM 15 A I'm trying to do anything I can to get the car back.

11:16AM 16 Q Okay. And that includes sleeping over and telling him you

11:16AM 17 miss him and complaining about other girls being there?

11:16AM 18 A If I had to put on a front, then yes.

11:16AM 19 Q And you chose not to disclose to the ATF that you were

11:16AM 20 having some difficulty -- that you had done the same thing

11:16AM 21 basically that you had done with the Chrysler was get a car for

11:16AM 22 someone you know to be a criminal, and let him have access to

11:16AM 23 it for months now. So it's been four months that he has access

11:16AM 24 to your car.

11:16AM 25 A Correct.

11:16AM 1 Q Even after he misused another car you gave him.

11:16AM 2 A Correct.

11:16AM 3 Q And you have an agreement to provide information regarding

11:16AM 4 Jake Smith to the ATF.

11:16AM 5 MR. NAMMAR: Objection. Asked and answered.

11:16AM 6 THE COURT: Go ahead. You can answer.

11:16AM 7 THE WITNESS: Correct.

11:16AM 8 BY MS. PANAGAKOS:

11:16AM 9 Q And you didn't share your difficulties with regard to him

11:16AM 10 using a car you owned while he's engaged in criminal activity.

11:17AM 11 A Correct.

11:17AM 12 Q So during the time while you were an informant, this

11:17AM 13 Exhibit 9000-43 contains --

11:17AM 14 MS. PANAGAKOS: If we can show page 1 to Ms. Akau,

11:17AM 15 please.

11:17AM 16 BY MS. PANAGAKOS:

11:18AM 17 Q This is a timeline of communications between you and Jake

11:18AM 18 Smith from December 6, 2017, through April 2018. And it's got

11:18AM 19 335 text messages back and forth.

11:18AM 20 You never gave your -- you had -- I mean so you

11:18AM 21 were -- you had the ability to collect information from Jacob

11:18AM 22 Smith, text messages --

11:18AM 23 A Correct.

11:18AM 24 Q -- emails, CorrLink emails --

11:18AM 25 A Correct.

11:18AM 1 Q -- telephone calls, voicemails. You could have provided

11:18AM 2 them with a lot of stuff.

11:18AM 3 A Okay.

11:18AM 4 Q But you were romantically involved with him and you did

11:18AM 5 not do so.

11:18AM 6 A Correct.

11:18AM 7 Q And you have a plea agreement that doesn't charge you with

11:18AM 8 the robbery of Nicholas Carignan. Agrees not to charge you

11:18AM 9 with the robbery of Nicholas Carignan.

11:19AM 10 A Correct.

11:19AM 11 Q Agrees not to charge you with the robbery of Palani

11:19AM 12 Mitchell.

11:19AM 13 A Correct.

11:19AM 14 Q Agrees not to charge you for your role in providing a car

11:19AM 15 to criminals that was used to shoot an entirely innocent person

11:19AM 16 during Dae Han Moon's road rage --

11:19AM 17 MR. NAMMAR: Objection. Counsel is testifying.

11:19AM 18 THE COURT: Overruled. Go ahead.

11:19AM 19 THE WITNESS: Sorry, can you repeat the last --

11:19AM 20 BY MS. PANAGAKOS:

11:19AM 21 Q You're not being charged with any offense resulting from

11:19AM 22 Dae Han Moon using the vehicle that you rented and provided to

11:19AM 23 Jacob Smith to take shots at an innocent person who Dae Han

11:19AM 24 Moon got mad at as a result of a road rage incident, you're not

11:19AM 25 being charged with anything as a result of that.

11:19AM 1 A Correct.

11:19AM 2 Q And you are not being charged with anything as a result of
11:19AM 3 the robbery of Eric Lum.

11:19AM 4 A Correct.

11:19AM 5 Q And you were aware that there were firearms used at the
11:19AM 6 robbery of Nicholas Carignan.

11:19AM 7 A Correct.

11:19AM 8 Q And you're aware that -- that you were involved in?

11:20AM 9 A Okay.

11:20AM 10 Q And you're aware that there were firearms present at the
11:20AM 11 robbery of Palani Mitchell that you were involved -- a robbery
11:20AM 12 that you were involved in.

11:20AM 13 A Correct.

11:20AM 14 Q And those two robberies resulted in the people who
11:20AM 15 participated in those robberies stealing a total of
11:20AM 16 approximately 7 pounds of methamphetamine.

11:20AM 17 A Correct.

11:20AM 18 Q And you're aware that a charge of conspiracy to rob that
11:20AM 19 quantity of drugs has a mandatory minimum sentence of at least
11:20AM 20 ten years.

11:20AM 21 A Well, now I'm aware, yes.

11:20AM 22 Q And you're aware that use of a firearm in furtherance of
11:20AM 23 such a conspiracy carries a consecutive seven-year mandatory
11:20AM 24 penalty.

11:20AM 25 A Okay.

11:20AM 1 Q And the Palani Mitchell, since the firearm was present,
11:20AM 2 carries a five-year mandatory consecutive penalty.

11:21AM 3 A Okay.

11:21AM 4 Q And the government has agreed not to charge you with any
11:21AM 5 of those offenses as part of your plea agreement.

11:21AM 6 A Correct.

11:21AM 7 Q And you have no mandatory minimum in the connection with
11:21AM 8 what the -- what you believed to be mace or pepper spray that
11:21AM 9 you released in the nightclub.

11:21AM 10 A Correct.

11:21AM 11 Q So Teiti Scanlan, she was your sister-in-law.

11:21AM 12 A Teiti.

11:21AM 13 Q Teiti. I'm sorry.

11:21AM 14 A No.

11:21AM 15 Q And you guys were close for a time.

11:21AM 16 A Yes.

11:21AM 17 Q And she is the one who told you that she, Teiti, had told
11:21AM 18 Mr. Miske about you being approached by law enforcement.

11:21AM 19 A Correct.

11:21AM 20 Q And to your knowledge, Mr. Miske was friends with Teiti?

11:21AM 21 A I wasn't too sure. She said she saw him at Starbucks.

11:22AM 22 Q So she saw him at Starbucks and she told Mr. Miske of what
11:22AM 23 had happened with you.

11:22AM 24 A I guess, yes.

11:22AM 25 Q You didn't tell him.

11:22AM 1 A No.

11:22AM 2 Q And then Teiti asked you if you wanted to meet with Mike.

11:22AM 3 A Right.

11:22AM 4 Q So it was Teiti who set this up.

11:22AM 5 A Teiti and Mike, yes.

11:22AM 6 Q Well, your contact was Teiti.

11:22AM 7 A Correct.

11:22AM 8 Q She's the one who asked you if you wanted to meet with

11:22AM 9 Mike.

11:22AM 10 A I don't recall if she asked me if I wanted to meet up with

11:22AM 11 him or vice versa. I don't recall.

11:22AM 12 Q And he was very nice to you during that meeting.

11:22AM 13 A He was.

11:22AM 14 Q Can I direct your attention to --

11:22AM 15 MS. PANAGAKOS: If we can show Ms. Akau

11:22AM 16 Exhibit 9000-31, which is not in evidence, page 51.

11:22AM 17 MR. NAMMAR: Are you trying to refresh recollection?

11:23AM 18 MS. PANAGAKOS: Yes, she said -- yes, I am, Your

11:23AM 19 Honor, as with regard to who set up the meeting.

11:23AM 20 BY MS. PANAGAKOS:

11:23AM 21 Q So, Ms. Akau, I would direct your attention to lines 2

11:23AM 22 through 6. And this is a transcript of your April 28, 2017,

11:23AM 23 statement which was obviously much closer in time. And you see

11:23AM 24 you told the agents that Teiti was the one who set it up?

11:23AM 25 A That's what it says, yes.

11:23AM 1 Q And it says Teiti asked you if you wanted to talk to Mike.

11:23AM 2 A That's what it says, correct.

11:23AM 3 Q And Mike gave you the name of a lawyer?

11:23AM 4 A Correct.

11:23AM 5 Q And was nice to you?

11:23AM 6 A Right.

11:23AM 7 Q And Teiti had a screenshot of the name of the lawyer?

11:23AM 8 A I believe so.

11:23AM 9 Q And so what Mr. Miske did was provide you information so

11:24AM 10 that you could contact a lawyer in the event you were contacted

11:24AM 11 by law enforcement again.

11:24AM 12 A Correct.

11:24AM 13 Q And he was very nice to you while he did it.

11:24AM 14 A He was.

11:24AM 15 Q He did not threaten?

11:24AM 16 A No.

11:24AM 17 Q He did not intimidate?

11:24AM 18 A No.

11:24AM 19 Q He was real -- honestly real nice is what you told the

11:24AM 20 agents.

11:24AM 21 A Right.

11:24AM 22 Q And there was absolutely nothing wrong with providing --

11:24AM 23 MR. NAMMAR: Objection. Speculation.

11:24AM 24 BY MS. PANAGAKOS:

11:24AM 25 Q -- a friend of a friend the name of a lawyer.

11:24AM 1 MR. NAMMAR: Argument.

11:24AM 2 THE COURT: What was the question?

11:24AM 3 BY MS. PANAGAKOS:

11:24AM 4 Q You were appreciative that a friend of your -- of your
11:24AM 5 sister-in-law gave you the name of a lawyer so you could
11:24AM 6 perhaps exercise your right to counsel the next time you were
11:24AM 7 contacted by law enforcement.

11:24AM 8 A Correct.

11:24AM 9 MS. PANAGAKOS: Your Honor, may I have a moment?

11:24AM 10 THE COURT: Sure.

11:25AM 11 BY MS. PANAGAKOS:

11:25AM 12 Q Ms. Akau, when you did the Nicholas Carignan robbery --

11:25AM 13 A Okay.

11:25AM 14 Q -- that was again the original people with Kurt Kipapa and
11:25AM 15 Norman Akau, both members of Nakipi?

11:25AM 16 A Correct.

11:25AM 17 Q And you only got paid about \$700 for that?

11:25AM 18 A About so.

11:25AM 19 Q And it came from Kurt Kipapa?

11:25AM 20 A Kurt or Norman. I don't recall.

11:25AM 21 Q And so -- I mean the other guys got 5 pounds. You got
11:25AM 22 \$700. So really what you were interested was the protection
11:25AM 23 they could provide, right?

11:25AM 24 A Of course.

11:25AM 25 Q And that was the protection at that time from Nakipi?

11:25AM 1 A Protection of them against my ex-husband, yes.

11:25AM 2 Q Right, the protection of Nakipi against your ex-husband.

11:25AM 3 A Well, I wouldn't say it was just Nakipi, but --

11:26AM 4 Q Well, you didn't know Jake Smith yet, right?

11:26AM 5 A From after the Nico thing, yes.

11:26AM 6 Q After. So in this instance the first people who were

11:26AM 7 providing protection were Norman Akau and Kurt Kipapa, Jr.

11:26AM 8 A Correct.

11:26AM 9 Q And then Norm, through his relationship with Jacob Smith

11:26AM 10 and Jacob Smith's father, introduced you to Jacob Smith.

11:26AM 11 A Correct.

11:26AM 12 Q And then through your relationship with Jacob Smith, a

11:26AM 13 friend and romantic relationship, you then benefitted from his

11:26AM 14 protection.

11:26AM 15 A Correct.

11:26AM 16 Q It had nothing to do with Mr. Miske.

11:26AM 17 A Correct.

11:26AM 18 MS. PANAGAKOS: May I have a moment, Your Honor?

11:26AM 19 THE COURT: Yes.

11:26AM 20 MS. PANAGAKOS: I have nothing further. Thank you,

11:26AM 21 Ms. Akau.

11:26AM 22 THE COURT: Mr. Nammar.

11:26AM 23 REDIRECT EXAMINATION

11:26AM 24 BY MR. NAMMAR:

11:26AM 25 Q Ms. Akau, you were asked about -- on cross about the

11:27AM 1 meeting with Mr. Miske outside the Keolu liquor store.

11:27AM 2 A Correct.

11:27AM 3 Q As you sit here today, what do you think the purpose of

11:27AM 4 that meeting was?

11:27AM 5 A To save himself --

11:27AM 6 Q To save his --

11:27AM 7 A Sorry, to save himself so I wouldn't say anything.

11:27AM 8 Q Who is "he"?

11:27AM 9 A Mike.

11:27AM 10 Q You were asked questions about the Chrysler 300, quite a

11:27AM 11 number of questions. Did you have any reason to believe when

11:27AM 12 you rented it that it would be used in a crime?

11:27AM 13 A No, I did not.

11:27AM 14 Q And I think you told us the term was "safe car."

11:27AM 15 A Correct.

11:27AM 16 Q That's what Norman and Jacob Smith told you about the car?

11:27AM 17 A Correct.

11:27AM 18 Q What did you understand a safe car to be?

11:27AM 19 A A car that they could drive and not do any illegal

11:27AM 20 activity out of.

11:27AM 21 Q Okay. Did you have any idea that that car would be used

11:27AM 22 by Dae Han Moon in a shooting?

11:27AM 23 A No, I did not.

11:28AM 24 Q Did you have any idea that it would be used in the robbery

11:28AM 25 of Eric Lum?

11:28AM 1 A No, I did not.

11:28AM 2 Q The BMW that we've talked about and the text messages that
11:28AM 3 we saw, did you have any idea that that car was used in a
11:28AM 4 crime?

11:28AM 5 A No, I did not.

11:28AM 6 Q We talked about Ginza and you were asked about who the
11:28AM 7 direction to do that came from.

11:28AM 8 A Correct.

11:28AM 9 Q You saw Mr. Miske meeting with Jacob Smith that day,
11:28AM 10 right?

11:28AM 11 A I did.

11:28AM 12 Q That was at the Ala Moana shopping center, right?

11:28AM 13 A Correct.

11:28AM 14 Q And you also heard from Mr. Smith after it happened that
11:28AM 15 Michael Miske was pulled over near Ginza Nightclub, right?

11:28AM 16 A Correct.

11:28AM 17 Q And the instructions you were getting from Jacob Smith,
11:28AM 18 were they clear who those instructions were originating from?

11:28AM 19 A Yes.

11:28AM 20 Q Who?

11:28AM 21 A Michael Miske.

11:28AM 22 Q Now, Nakipi, you were asked some questions about Nakipi.

11:29AM 23 Do you know if Jacob Smith was ever a member of Nakipi?

11:29AM 24 A I don't believe so.

11:29AM 25 Q Do you know if Lance Bermudez was ever a member of Nakipi?

11:29AM 1 A I don't believe so.

11:29AM 2 Q Do you know if John Stancil was ever a member of Nakipi?

11:29AM 3 A Also, I'm not --

11:29AM 4 Q And those three people that I just named, they were all
11:29AM 5 involved in the robbery of Nico, right?

11:29AM 6 A Correct.

11:29AM 7 THE COURT: I'm not sure we caught the answer to
11:29AM 8 Mr. Nammar's penultimate question: Do you know if John Stancil
11:29AM 9 was ever a member of Nakipi? What was your response?

11:29AM 10 THE WITNESS: I don't believe so. Sorry.

11:29AM 11 THE COURT: Thank you.

11:29AM 12 BY MR. NAMMAR:

11:29AM 13 Q You were asked some questions about a meeting in April of
11:29AM 14 2017 with law enforcement that was recorded, right?

11:30AM 15 A Correct.

11:30AM 16 Q That was the one where your dad was present, right?

11:30AM 17 A Correct.

11:30AM 18 Q And I believe you testified that that particular meeting,
11:30AM 19 that you have reviewed a recording of it recently; is that
11:30AM 20 right?

11:30AM 21 A Correct.

11:30AM 22 Q Now, during that recording were you asked questions by law
11:30AM 23 enforcement about Ginza?

11:30AM 24 A No.

11:30AM 25 Q The Ginza Nightclub, where you poured --

11:30AM 1 A Yes, yes.

11:30AM 2 Q Did you tell them about pouring out a substance in Ginza
11:30AM 3 during that meeting on April 28, 2017?

11:30AM 4 A Yes.

11:30AM 5 Q And did you tell them, consistent with what you've
11:30AM 6 testified to here today, that you poured that substance out at
11:30AM 7 the direction of Jacob Smith and Michael Miske?

11:30AM 8 A Yes.

11:30AM 9 Q In the recording with law enforcement in April of 2017,
11:30AM 10 did you also tell them that you were offered \$3,000 to commit
11:31AM 11 that crime?

11:31AM 12 A Yes.

11:31AM 13 Q In the recording in April of 2017, did you also tell law
11:31AM 14 enforcement that before the crime occurred that you went to
11:31AM 15 John Stancil's house in Waimanalo to pick up what you thought
11:31AM 16 was mace?

11:31AM 17 A Yes.

11:31AM 18 Q Did you also tell them in the recording in April 2017 that
11:31AM 19 they wanted you to do it because you -- you were a girl?

11:31AM 20 A Yes.

11:31AM 21 Q And because they had used Kaulana to do it the night
11:31AM 22 before at the District?

11:31AM 23 A Correct.

11:31AM 24 Q Did you also tell law enforcement in April 2017 in the
11:31AM 25 recording that Jacob Smith had met with Michael Miske at the

11:31AM 1 Ala Moana mall before the chemical attack took place?

11:31AM 2 A Yes.

11:31AM 3 Q And did you also tell them in that recorded meeting that

11:32AM 4 you had learned after the fact, after you released the

11:32AM 5 chemicals in the nightclub in Ginza, that Michael Miske had

11:32AM 6 been pulled over?

11:32AM 7 A Yes, correct.

11:32AM 8 Q And that his car had been searched?

11:32AM 9 A Correct.

11:32AM 10 Q Did you also tell them in that meeting that was recorded

11:32AM 11 about your meeting with Mr. Miske at Keolu liquor store?

11:32AM 12 A Correct, yes.

11:32AM 13 Q Now, moving forward from there to October 2018, did you

11:32AM 14 also testify before the grand jury?

11:32AM 15 A Yes.

11:32AM 16 Q And have you recently reviewed a transcript from that

11:32AM 17 proceeding?

11:32AM 18 A Yes.

11:32AM 19 Q And in the grand jury, did you tell the grand jury about

11:32AM 20 those same robberies that you talked about here today, the

11:32AM 21 Palani Mitchell robbery and the Nico robbery?

11:32AM 22 A Yes.

11:32AM 23 Q Did you tell them about your involvement?

11:32AM 24 A Yes.

11:32AM 25 Q Did you also tell them about pouring an unknown substance

11:32AM 1 in the Ginza Nightclub consistent with what you testified to

11:32AM 2 here today?

11:33AM 3 A Yes.

11:33AM 4 Q And in the grand jury, did you also tell them about the

11:33AM 5 Chrysler 300 that we talked about here today, how you rented

11:33AM 6 it?

11:33AM 7 A Yes.

11:33AM 8 Q Now, during cross-examination you were asked about a

11:33AM 9 number of law enforcement reports. When you met with law

11:33AM 10 enforcement, were they -- besides the April 2017 meeting, were

11:33AM 11 they recording your meetings with them?

11:33AM 12 A I don't believe so.

11:33AM 13 Q And when you testified in grand jury, was there a court

11:33AM 14 reporter taking down what you said?

11:33AM 15 A Yes.

11:33AM 16 Q So we have -- from the grand jury we have word for word

11:33AM 17 what you were saying, right?

11:33AM 18 A Correct.

11:33AM 19 Q Those reports that you looked at, those aren't word-for-

11:33AM 20 word verbatim what you had told the agents, is it?

11:33AM 21 A No.

11:33AM 22 Q Now, you were asked about -- you were shown a report and

11:33AM 23 you were asked about a conversation and you testified to on

11:34AM 24 direct a conversation in the summertime of 2020 with Jacob

11:34AM 25 Smith.

11:34AM 1 A Yes.

11:34AM 2 Q This is the one where you had told us that after Mr. Miske
11:34AM 3 had been arrested, Jacob Smith called you from prison, right?

11:34AM 4 A Correct.

11:34AM 5 Q Okay. You were asked about whether Mr. Smith ever told
11:34AM 6 you -- ever coached you, do you recall that?

11:34AM 7 A I recall.

11:34AM 8 Q Do you remember him every using those words "coaching"?

11:34AM 9 A No.

11:34AM 10 Q Do you remember him during that conversation ever saying
11:34AM 11 he was going to blame everything on Mike?

11:34AM 12 A I don't recall.

11:34AM 13 Q Have you told the truth here today?

11:34AM 14 A Yes, I have.

11:34AM 15 Q Does your plea agreement say anything about giving
11:34AM 16 testimony truthfully?

11:34AM 17 A Yes.

11:34AM 18 Q What does it say?

11:34AM 19 A It says that I should be truthful.

11:34AM 20 Q Did you get together with any other witnesses to shape or
11:34AM 21 alter the way you would testify here today?

11:34AM 22 A No, I did not.

11:34AM 23 Q Do you know what discovery is?

11:35AM 24 A Yes.

11:35AM 25 Q Have you reviewed any discovery in your case?

11:35AM 1 A No.

11:35AM 2 Q Do you have any idea what Jacob Smith has said about the
11:35AM 3 chemical weapons attack on Ginza?

11:35AM 4 A No.

11:35AM 5 Q Do you have any idea what Kaulana Freitas has said about
11:35AM 6 the chemical weapons attack at District?

11:35AM 7 A No.

11:35AM 8 Q What's your understanding of what will happen if you don't
11:35AM 9 tell the truth during your testimony?

11:35AM 10 A That my plea deal would be void.

11:35AM 11 Q What's your understanding about the maximum penalty you're
11:35AM 12 facing?

11:35AM 13 A A life sentence.

11:35AM 14 Q Have any promises been made to you about what sentence you
11:35AM 15 will get?

11:35AM 16 A No.

11:35AM 17 Q What do you understand is the most important thing to
11:35AM 18 remember about your testimony here today?

11:35AM 19 A To be truthful.

11:35AM 20 MR. NAMMAR: Nothing further.

11:35AM 21 THE COURT: Ms. Panagakos, anything else?

11:35AM 22 MS. PANAGAKOS: Yes, Your Honor, briefly.

11:35AM 23 RECROSS-EXAMINATION

11:35AM 24 BY MS. PANAGAKOS:

11:35AM 25 Q Ms. Akau, in your recorded April 28th, 2017 statement that

11:36AM 1 Mr. Nammar just asked you about, you also said with regard to
11:36AM 2 Jake Smith and Mike Miske on the evening of the Ginza Nightclub
11:36AM 3 incident: "I never seen him talk to Mike, nothing." Right?
11:36AM 4 A That says that.
11:36AM 5 Q And with regard to going to the Encore afterwards, you sat
11:36AM 6 in the car outside of Restaurant Row.
11:36AM 7 A Correct.
11:36AM 8 Q And you told the agents you don't know where Mr. Smith
11:36AM 9 went, you didn't see him go in anywhere, you don't know.
11:36AM 10 A Just from what he told me, yes.
11:36AM 11 MS. PANAGAKOS: Can we show Ms. Akau 9000-31, page 23,
11:37AM 12 lines 21 through 22.
11:37AM 13 BY MS. PANAGAKOS:
11:37AM 14 Q Do you see he said: "I don't know where he went"?
11:37AM 15 A Okay.
11:37AM 16 Q And some of these reports that I showed you, I can show
11:37AM 17 them to you again if you don't remember, but the June 16, 2017,
11:37AM 18 report of the agents and Assistant United States Attorney Chris
11:37AM 19 Thomas's meeting with you had some language in quotations which
11:37AM 20 would be attributing statements to you, right?
11:37AM 21 A If it's in quotations, yes.
11:37AM 22 Q So "rip off" in quotes, "Nico" in quotes, "rip" in quotes,
11:37AM 23 "Nakipi" in quotes, that's because they were quoting you,
11:37AM 24 right?
11:37AM 25 A Correct.

11:37AM 1 Q And in the -- your report of -- their report of what --
11:37AM 2 the agents report of what you told the agents on August 6,
11:38AM 3 2020, reports that you said Smith was blaming everything on,
11:38AM 4 quote --

11:38AM 5 MR. NAMMAR: Objection, Your Honor, reading from the
11:38AM 6 report.

11:38AM 7 MS. PANAGAKOS: All right. Then I'll take the time,
11:38AM 8 if we could show Ms. Akau the report, 9000-016. Paragraph 2.
11:38AM 9 BY MS. PANAGAKOS:

11:38AM 10 Q And do you see quotations around "Mike and Johnnie"?

11:38AM 11 A I see quotation.

11:38AM 12 Q Quotations around "feel out"?

11:38AM 13 A Yes.

11:38AM 14 Q Quotations around "fish"?

11:38AM 15 A Yes.

11:38AM 16 Q So these reports at times quote what the agents understood
11:38AM 17 you to be saying.

11:38AM 18 A I believe so.

11:38AM 19 Q Mr. Smith's relationship with Nakipi, while he's not a
11:38AM 20 member, he has a close relationship with Norm Akau through his
11:38AM 21 own personal connection.

11:38AM 22 A Correct.

11:38AM 23 Q And he also has a relationship with Lindsey Kinney, right?

11:38AM 24 A Correct.

11:38AM 25 Q And Lindsey Kinney was a high ranking member of Nakipi,

11:39AM 1 right?

11:39AM 2 A Correct.

11:39AM 3 Q And Mr. Smith purchased drugs from Lindsey Kinney.

11:39AM 4 A Correct.

11:39AM 5 Q And sometimes he stiffed him.

11:39AM 6 A Correct.

11:39AM 7 Q And he dealt drugs for him.

11:39AM 8 A Correct.

11:39AM 9 Q And they got in fights sometimes.

11:39AM 10 A Correct.

11:39AM 11 Q And sometimes Norm Akau sided with Mr. Smith.

11:39AM 12 A I guess.

11:39AM 13 MR. NAMMAR: Objection. This is beyond the scope of

11:39AM 14 redirect.

11:39AM 15 THE COURT: Sustained.

11:39AM 16 BY MS. PANAGAKOS:

11:39AM 17 Q And as far as Mr. Smith's -- the people that Mr. Nammar

11:39AM 18 asked you about and their associations with Nakipi, are you

11:39AM 19 aware of Mr. Smith's association with La Familia?

11:39AM 20 A I know that he's a member.

11:39AM 21 Q A member of --

11:39AM 22 MR. NAMMAR: Objection. This is beyond the scope of

11:39AM 23 redirect.

11:39AM 24 THE COURT: Sustained.

11:39AM 25 BY MS. PANAGAKOS:

11:39AM 1 Q Are you aware of the connection between Nakipi and La
11:39AM 2 Familia?
11:39AM 3 A No, I'm not.
11:39AM 4 Q And Nakipi and USO?
11:39AM 5 A No, I'm not.
11:40AM 6 Q And La Familia and Shooter Gang?
11:40AM 7 MR. NAMMAR: Objection. It's beyond the scope of
11:40AM 8 redirect.
11:40AM 9 THE COURT: Sustained.
11:40AM 10 MS. PANAGAKOS: Nothing further.
11:40AM 11 THE COURT: You may step down, ma'am.
11:40AM 12 THE WITNESS: Thank you.
11:40AM 13 THE COURT: The government may call its next witness.
11:40AM 14 MR. INCIONG: Thank you, Your Honor. The United
11:40AM 15 States calls Kaulana Freitas.
11:42AM 16 THE CLERK: Please raise your right hand.
11:42AM 17 KAULANA FREITAS,
11:42AM 18 called as a witness, having been first duly sworn, was examined
11:42AM 19 and testified as follows:
11:42AM 20 THE CLERK: Please be seated. Please state your full
11:42AM 21 name, spelling your last name for the record.
11:42AM 22 THE WITNESS: Kaulana Freitas. Last name is
11:42AM 23 F-R-E-I-T-A-S.
24
25

11:42AM 1 DIRECT EXAMINATION

11:42AM 2 BY MR. INCIONG:

11:42AM 3 Q Good morning, Mr. Freitas.

11:42AM 4 A Good morning.

11:42AM 5 Q How old are you, sir?

11:42AM 6 A Thirty-five.

11:42AM 7 Q Where were you born?

11:42AM 8 A Honolulu, Hawaii.

11:42AM 9 Q Did you grow up here on Oahu?

11:42AM 10 A Yes, I moved here -- I left here when I was ten years old.

11:42AM 11 Q Where did you move to?

11:42AM 12 A Las Vegas, Nevada.

11:42AM 13 Q For the ten years or so that you were here, what part of

11:42AM 14 the island did you grow up on?

11:42AM 15 A Honolulu.

11:42AM 16 Q Did you have family on other parts of the island?

11:43AM 17 A Yes.

11:43AM 18 Q What parts?

11:43AM 19 A Waimanalo and Kailua.

11:43AM 20 Q When you moved to the Mainland when you were about ten,

11:43AM 21 how long did you stay there?

11:43AM 22 A About eight years, nine years.

11:43AM 23 Q Did you live in more than one location on the Mainland?

11:43AM 24 A Yes.

11:43AM 25 Q Where did you live?

11:43AM 1 A California and Las Vegas.

11:43AM 2 Q Did you eventually move back to Hawaii?

11:43AM 3 A Yes.

11:43AM 4 Q About how old were you when you moved back?

11:43AM 5 A About 26.

11:43AM 6 Q Did you have family or anything at that time?

11:43AM 7 A Yes.

11:43AM 8 Q Tell us about that.

11:43AM 9 A I have two boys.

11:43AM 10 Q So they -- they were born at that time?

11:43AM 11 A Yes.

11:43AM 12 Q Was that part of the reason why you moved back to Hawaii?

11:43AM 13 A Yes.

11:43AM 14 Q Any other reasons why you moved back?

11:43AM 15 A To start a new fresh start for my family.

11:43AM 16 Q What were you doing for work at that time?

11:43AM 17 A I was working at Home Depot.

11:43AM 18 Q When you came back to Hawaii, did you continue to work for

11:44AM 19 Home Depot or did you have new employment?

11:44AM 20 A I had a new job.

11:44AM 21 Q And what was that?

11:44AM 22 A Working at Halawa at a warehouse.

11:44AM 23 Q How long did you work at that place?

11:44AM 24 A About nine months.

11:44AM 25 Q What did you do then, for work?

11:44AM 1 A For work, just from medical supplies, packing and stuff.

11:44AM 2 Q Okay. Sorry, I meant the next job after -- after the nine

11:44AM 3 months there.

11:44AM 4 A Oh, I was -- I was working with my dad at Kama'aina

11:44AM 5 Plumbing.

11:44AM 6 Q That's obviously a plumbing company?

11:44AM 7 A Yes.

11:44AM 8 Q What were doing for the plumbing company?

11:44AM 9 A I was a helper.

11:44AM 10 Q And you said you were working for your dad. Was that his

11:44AM 11 company?

11:44AM 12 A Yes, his company and Mike's company.

11:44AM 13 Q When you say "Mike's company," who are you referring to?

11:44AM 14 A Mike Miske.

11:44AM 15 Q Who is Mike Miske?

11:44AM 16 A My cousin.

11:44AM 17 Q How are you related to Mr. Miske?

11:44AM 18 A My mom and him is first cousins.

11:45AM 19 Q So this company Kama'aina Plumbing was co-owned, is that

11:45AM 20 accurate to say by Mr. Miske and your dad?

11:45AM 21 A Yes.

11:45AM 22 Q Now, do you see the person in court today that you know to

11:45AM 23 be your cousin Mike Miske?

11:45AM 24 A Yes.

11:45AM 25 Q Could you indicate where he's seated and what he's wearing

11:45AM 1 for the record, please?

11:45AM 2 A He's sitting on the left with a brown jacket.

11:45AM 3 MR. INCIONG: Your Honor, may the record reflect

11:45AM 4 Mr. Freitas has identified the defendant?

11:45AM 5 THE COURT: Yes, the record should reflect the witness

11:45AM 6 Mr. Freitas's identification of the defendant Mr. Miske.

11:45AM 7 BY MR. INCIONG:

11:45AM 8 Q Now, when you moved to the Mainland, you were just a kid,

11:45AM 9 right, you said about ten?

11:45AM 10 A Yes.

11:45AM 11 Q Did you have any sort of relationship with Mr. Miske when

11:45AM 12 you were ten or under that you recall?

11:45AM 13 A No, not that I recall.

11:45AM 14 Q So when you came back to Hawaii, did you know him well at

11:45AM 15 that point?

11:45AM 16 A No. I seen him around here and there.

11:46AM 17 Q What is the approximate age difference between yourself

11:46AM 18 and Mr. Miske?

11:46AM 19 A About 15 years.

11:46AM 20 Q So when you started working at the company that was

11:46AM 21 co-owned by Mr. Miske and your father, did you have more

11:46AM 22 contact with Mr. Miske at that point?

11:46AM 23 A I would see him in the office here and there.

11:46AM 24 Q Was Mr. Miske an active member of Kama'aina Plumbing or

11:46AM 25 was he more like a silent partner?

11:46AM 1 A A silent partner.

11:46AM 2 Q Was your dad kind of the more hands-on part of the

11:46AM 3 partnership?

11:46AM 4 A Yes.

11:46AM 5 Q How long did you work at Kama'aina Plumbing for?

11:46AM 6 A About nine months.

11:46AM 7 Q So not very long?

11:46AM 8 A Not long.

11:46AM 9 Q Why -- why such a short period?

11:46AM 10 A Me and my dad got into it, so I parted ways.

11:46AM 11 Q All right. Did you seek new employment from there?

11:46AM 12 A Yes.

11:46AM 13 Q Where did you go to work from there?

11:46AM 14 A I worked at Victoria's Secret.

11:46AM 15 Q How long did you work there?

11:46AM 16 A About a year.

11:46AM 17 Q So at this point you've been back to Hawaii now for not

11:47AM 18 quite two years; is that accurate?

11:47AM 19 A Yes.

11:47AM 20 Q Did you get reacquainted with any of the family you

11:47AM 21 referred to that -- that you knew after you had moved away?

11:47AM 22 A Yes.

11:47AM 23 Q Any specific family members you were spending a lot of

11:47AM 24 time with during that period?

11:47AM 25 A My cousin John and Cody.

11:47AM 1 Q What are John and Cody's last names?

11:47AM 2 A Stancil.

11:47AM 3 MR. INCIONG: Could I show Mr. Freitas Exhibit 1-40,
11:47AM 4 which has been previously admitted from the government's first
11:47AM 5 witness list, please?

11:47AM 6 THE COURT: You may.

11:47AM 7 MR. INCIONG: Thank you, Your Honor.

11:47AM 8 And if the jury could be shown that as well.

11:47AM 9 THE COURT: Yes.

11:47AM 10 MR. INCIONG: Thank you.

11:47AM 11 BY MR. INCIONG:

11:47AM 12 Q Who do you recognize this to be, Mr. Freitas?

11:47AM 13 A John Stancil.

11:47AM 14 Q And how much time were you spending with Mr. Stancil
11:47AM 15 during this year or two after you moved back to Hawaii?

11:47AM 16 A Quite a bit of time.

11:48AM 17 Q What kinds of things were you doing with Mr. Stancil?

11:48AM 18 A All kinds of stuff. Hanging out, cruising, going to the
11:48AM 19 beach and stuff like that.

11:48AM 20 Q After you were working at Victoria's Secret for a while,
11:48AM 21 were you offered any new employment by Mr. Miske?

11:48AM 22 A Yes.

11:48AM 23 Q What was that?

11:48AM 24 A His personal assistant.

11:48AM 25 Q What did that mean to be his personal assistant?

11:48AM 1 A Run errands for his businesses.

11:48AM 2 MR. INCIONG: If we could take that exhibit down,
11:48AM 3 please. Thank you.

11:48AM 4 BY MR. INCIONG:

11:48AM 5 Q You said businesses. Were there a number of businesses
11:48AM 6 that you were aware of that Mr. Miske owned or was involved
11:48AM 7 with?

11:48AM 8 A Yes.

11:48AM 9 Q What are those?

11:48AM 10 A M Nightclub, Hawaii Partners, Kama'aina Termite and Pest
11:48AM 11 Control, Kama'aina Plumbing, and the Rachel fishing boat.

11:48AM 12 Q All right. So as his personal assistant, did you
11:48AM 13 understand that your services could be for any one of those
11:48AM 14 companies at any time?

11:48AM 15 A Yes.

11:48AM 16 Q Did you in fact do different things for each of those
11:49AM 17 companies at certain points?

11:49AM 18 A Yes.

11:49AM 19 Q Did you ever go back and do any work for Kama'aina
11:49AM 20 Plumbing?

11:49AM 21 A Any work for Kama'aina Plumbing? No, just run errands.

11:49AM 22 Q Okay. And when you say "run errands," what -- give us
11:49AM 23 some examples. What kinds of things were you doing that were
11:49AM 24 errands?

11:49AM 25 A Getting office supplies, paying for the -- the people in

11:49AM 1 the boat, paychecks and stuff like that.

11:49AM 2 Q Okay. And the boat you're referring to is the Rachel?

11:49AM 3 A Yes.

11:49AM 4 Q I'll ask you a little bit about that later. But how much

11:49AM 5 were you being paid by Mr. Miske to be his personal assistant?

11:49AM 6 A Five to \$600 a week.

11:49AM 7 Q You say five to six. Why -- why was there a range there,

11:49AM 8 did you know?

11:49AM 9 A No, I don't know. It was just 500, 550, just roughly

11:49AM 10 around there.

11:49AM 11 Q Okay. You were paid that weekly?

11:50AM 12 A Yes.

11:50AM 13 Q How were you paid that money?

11:50AM 14 A In cash.

11:50AM 15 Q Was it always in cash?

11:50AM 16 A Yes.

11:50AM 17 Q Did you report any taxes on that cash?

11:50AM 18 A No.

11:50AM 19 Q Do you recall approximately when you started as

11:50AM 20 Mr. Miske's personal assistant, what year?

11:50AM 21 A I would say about 2015, I believe.

11:50AM 22 Q And would it be fair to say then based on that, that you

11:50AM 23 came back to Hawaii in around 2013?

11:50AM 24 A Yes.

11:50AM 25 Q Now, when you were offered the job to be Mr. Miske's

11:50AM 1 personal assistant, are you aware of whether Mr. Stancil was
11:50AM 2 offered any employment at that same time by Mr. Miske?
11:50AM 3 A Yes.
11:50AM 4 Q What employment was he offered?
11:50AM 5 A To work back in the movies.
11:50AM 6 Q When you say the movies, is that a union job?
11:50AM 7 A Yes.
11:50AM 8 Q Did Mr. Stancil accept that employment?
11:50AM 9 A Yes.
11:50AM 10 Q Were you offered to work -- have that same job?
11:50AM 11 A No.
11:50AM 12 Q Where did you report to work when you were working for
11:51AM 13 Mr. Miske as his personal assistant?
11:51AM 14 A 940B Queen Street.
11:51AM 15 Q What is located at that address?
11:51AM 16 A Kama'aina Termite and Pest Control and Kama'aina Plumbing.
11:51AM 17 Q Did you refer to that location as the shop?
11:51AM 18 A Yes.
11:51AM 19 MR. INCIONG: Could we show Mr. Freitas Exhibit 5-22,
11:51AM 20 please, which has been previously admitted, as well as the
11:51AM 21 jury, please.
11:51AM 22 BY MR. INCIONG:
11:51AM 23 Q Do you recognize what's shown in Exhibit 5-22, sir?
11:51AM 24 A Yes.
11:51AM 25 Q What do you see there?

11:51AM 1 A The shop, the company.

11:51AM 2 Q Is this where you would report to work when you were

11:51AM 3 Mr. Miske's personal assistant?

11:51AM 4 A Yes.

11:51AM 5 Q What were your typical hours during the day?

11:51AM 6 A About 8:00 a.m. to 5:00 p.m.

11:51AM 7 Q Monday through Friday?

11:51AM 8 A Monday through Fridays.

11:51AM 9 Q Did you ever have to work on the weekends?

11:52AM 10 A If need to be.

11:52AM 11 Q But that was not your typical work schedule?

11:52AM 12 A No.

11:52AM 13 Q Okay. When you reported to work, was there a certain --

11:52AM 14 did you have your own office, for example, or where did you

11:52AM 15 report within that particular building?

11:52AM 16 A No, I didn't have my own office. I would just report to

11:52AM 17 that building.

11:52AM 18 Q Where in the building then would you work out of?

11:52AM 19 A Upstairs or Mike's office.

11:52AM 20 Q All right.

11:52AM 21 MR. INCIONG: Could I show Mr. Freitas and the jury

11:52AM 22 Exhibit 1-777, which has previously been admitted, please?

11:52AM 23 BY MR. INCIONG:

11:52AM 24 Q Do you recognize that photo, Mr. Freitas?

11:52AM 25 A Yes.

11:52AM 1 Q How do you recognize that?

11:52AM 2 A It's Mike's office.

11:52AM 3 Q That is where you would meet with him when you were

11:52AM 4 working as his personal assistant?

11:52AM 5 A Yes.

11:52AM 6 MR. INCIONG: May we show the witness and the jury

11:52AM 7 1-778, which was also previously admitted, please?

11:52AM 8 THE COURT: Yes.

11:53AM 9 BY MR. INCIONG:

11:53AM 10 Q What is shown in that picture, Mr. Freitas?

11:53AM 11 A Mike's office.

11:53AM 12 Q Do you recognize that from working at the 940B location?

11:53AM 13 A Yes.

11:53AM 14 MR. INCIONG: Finally, could we show the witness and

11:53AM 15 the jury 1-779, which was previously admitted?

11:53AM 16 BY MR. INCIONG:

11:53AM 17 Q What do you see here, Mr. Freitas?

11:53AM 18 A Mike's office.

11:53AM 19 Q That's the same office that you've referenced where you

11:53AM 20 would meet with him when you were working as his personal

11:53AM 21 assistant?

11:53AM 22 A Yes.

11:53AM 23 Q Now, you mentioned one of the companies that you helped

11:53AM 24 him with was called Hawaii Partners; is that -- is that

11:53AM 25 correct?

11:53AM 1 A Yes.

11:53AM 2 Q What kind of business was Hawaii Partners?

11:53AM 3 A A car dealership.

11:53AM 4 Q What was your involvement or what were you asked to do as
11:53AM 5 part of your assistant duties for that particular company?

11:53AM 6 A I would go to the auctions, check on the vehicles, see if
11:53AM 7 they was running correctly, the windows roll up, the AC works,
11:54AM 8 register the vehicle, do safety inspections.

11:54AM 9 Q So Hawaii Partners was a car dealership, you said?

11:54AM 10 A Yes.

11:54AM 11 Q How did Hawaii Partners obtain its inventory, its vehicles
11:54AM 12 to sell? Where -- where did they get the cars from?

11:54AM 13 A Manheim or Copart.

11:54AM 14 Q What is Manheim or Copart?

11:54AM 15 A Manheim is the auto auctions where we purchased the
11:54AM 16 vehicles every Wednesdays at.

11:54AM 17 Q I see. Where was that located?

11:54AM 18 A Mapunapuna was Manheim. Copart was located at Campbell
11:54AM 19 Industrial.

11:54AM 20 Q Maybe you could just raise your voice just a little bit so
11:54AM 21 everybody can hear you.

11:54AM 22 A It was Manheim, and it was located in Mapunapuna. And
11:54AM 23 Copart was located in Campbell Industrial.

11:54AM 24 Q I see. And I think you said that Manheim, that auction
11:54AM 25 took place every Wednesday?

11:54AM 1 A Yes, correct.

11:54AM 2 Q What about the other one?

11:54AM 3 A I'm not too sure. Maybe it was on Mondays.

11:54AM 4 Q Did you go to any of these auctions?

11:54AM 5 A Yes.

11:54AM 6 Q Would you go regularly?

11:54AM 7 A Yes.

11:55AM 8 Q Both or one more than the other?

11:55AM 9 A Mostly Manheim.

11:55AM 10 Q That was the one every Wednesday?

11:55AM 11 A Yes.

11:55AM 12 Q When you went to these auctions, would you go by yourself

11:55AM 13 or did you go with anyone?

11:55AM 14 A I would go with Mike or I would go with my cousin John

11:55AM 15 Stancil.

11:55AM 16 Q And again, when you say "Mike," you're referring to

11:55AM 17 Mr. Miske?

11:55AM 18 A Yes.

11:55AM 19 Q Was he there more often than not or were you there by

11:55AM 20 yourself more often than not?

11:55AM 21 A He was there mostly.

11:55AM 22 Q Now, you said Mr. Stancil was there as well sometimes.

11:55AM 23 A Yes.

11:55AM 24 Q Was he an employee or helping with the actual business of

11:55AM 25 Hawaii Partners?

11:55AM 1 A Sometimes he would help out with Hawaii Partners.

11:55AM 2 Q Okay. So describe if you could just briefly the auction
11:55AM 3 process. I mean, how does that work? If someone goes to
11:55AM 4 Manheim auctions and is interested in a car, how does the
11:55AM 5 process work?

11:55AM 6 A We bid on the cars. There's multiple people there, so
11:55AM 7 you're going against other people bidding.

11:55AM 8 Q Are the cars displayed in person there or beforehand,
11:56AM 9 online, or how did that work?

11:56AM 10 A It's online and also in person. So you can walk around
11:56AM 11 the vehicle at the Manheim auction, and then they run through
11:56AM 12 these two lanes.

11:56AM 13 Q All right.

11:56AM 14 A And then we bid on the vehicles.

11:56AM 15 Q And is there like an auctioneer there calling out bids
11:56AM 16 like you see on -- at a normal auction type situation?

11:56AM 17 A Yes.

11:56AM 18 Q Did you bid on cars?

11:56AM 19 A I bid on cars.

11:56AM 20 Q Did Mr. Miske bid on cars?

11:56AM 21 A Yes.

11:56AM 22 Q Did Mr. Stancil bid on cars?

11:56AM 23 A Yes.

11:56AM 24 Q Was there any rhyme or reason as to who bid on the car if
11:56AM 25 there were multiple people present, or how did that work?

11:56AM 1 A Sometimes we will bid on the cars if Mike wasn't there.
11:56AM 2 If he's there, he would be bidding on the cars as well.
11:56AM 3 Q Who determined -- I'm sorry, were you going to say
11:56AM 4 something?
11:56AM 5 A No.
11:56AM 6 Q Okay. Who determined how much the bids were going to be
11:56AM 7 for these cars?
11:56AM 8 A The auctioneers.
11:56AM 9 Q I mean from Hawaii Partners, who -- were you given free --
11:57AM 10 free rein to bid as much as you thought was appropriate or was
11:57AM 11 it --
11:57AM 12 A No, not me, no.
11:57AM 13 Q Okay. So who set the prices?
11:57AM 14 A Mike did.
11:57AM 15 Q So if you were successful in purchasing a car through the
11:57AM 16 auction, what would you do with the car?
11:57AM 17 A We'd pick up the vehicle, take it back to the shop, or
11:57AM 18 Pearl City is another storage area over there that we keep the
11:57AM 19 cars.
11:57AM 20 Q What was in Pearl City?
11:57AM 21 A Storage.
11:57AM 22 Q Okay. That was one place that the cars would be stored?
11:57AM 23 A Yes.
11:57AM 24 Q Where else were the cars stored?
11:57AM 25 A At the 940B Queen Street.

11:57AM 1 Q You mentioned that part of your duties were to obtain
11:57AM 2 title and safety checks for the cars?
11:57AM 3 A Yes.
11:57AM 4 Q When would that be done typically after you had purchased
11:57AM 5 them?
11:57AM 6 A Most likely the next day. If possible, that same day.
11:57AM 7 Q Did any of these cars need repairs?
11:57AM 8 A Yes, some vehicles would need repairs.
11:57AM 9 Q How were those repairs handled?
11:58AM 10 A We'd take it to a body shop, a mechanic shop, and we'd fix
11:58AM 11 the cars there.
11:58AM 12 Q Was there any particular body shop or mechanic that Hawaii
11:58AM 13 Partners used?
11:58AM 14 A We used O'Sung's.
11:58AM 15 Q That's O, apostrophe, S-U-N-G, apostrophe, S?
11:58AM 16 A Yes.
11:58AM 17 Q Where was the O'Sung's shop located?
11:58AM 18 A King Street.
11:58AM 19 Q Okay. So when you started as Mr. Miske's personal
11:58AM 20 assistant, Hawaii Partners was already established and had been
11:58AM 21 in business?
11:58AM 22 A No.
11:58AM 23 Q So it was brand new when you started?
11:58AM 24 A Yes.
11:58AM 25 Q I see. At any time how many cars would you have on hand

11:58AM 1 that you would purchase for resale?

11:58AM 2 A Quite a bit. So when we first started we started off, we
11:58AM 3 started off with a lower bid, then later on it was maybe like
11:58AM 4 50 -- 30 to 50 cars.

11:58AM 5 Q So you would have 30 to 50 on hand at any time?

11:58AM 6 A Yes.

11:58AM 7 Q And these were then intended to be resold?

11:59AM 8 A Yes.

11:59AM 9 Q How did Hawaii Partners resell these cars? What was the
11:59AM 10 means?

11:59AM 11 A Craigslist, OfferUp, Facebook.

11:59AM 12 Q All online?

11:59AM 13 A Yes.

11:59AM 14 Q There was no, like, dealership lot or anything like that
11:59AM 15 that resold the cars, was there?

11:59AM 16 A No, we would be meeting the persons, like in person. They
11:59AM 17 wouldn't come to the shop and sign papers like a normal
11:59AM 18 dealership would.

11:59AM 19 Q Okay. So who directed that these sales be done all online
11:59AM 20 on Craigslist and the places you mentioned?

11:59AM 21 A Mike did.

11:59AM 22 Q So these are online ads that were placed?

11:59AM 23 A Yes.

11:59AM 24 Q Who determined the -- what comprised the ads, the language
11:59AM 25 in the ads and the photos, etcetera?

11:59AM 1 A Mike did.

11:59AM 2 Q Were you involved in that at all?

11:59AM 3 A Yes.

11:59AM 4 Q So what was -- what was your involvement then?

11:59AM 5 A To take pictures of the vehicle and to post it online.

11:59AM 6 Q So were you ever posting those online with -- without

12:00PM 7 consulting with Mr. Miske?

12:00PM 8 A No, it has to go through him first.

12:00PM 9 Q Then once he approved it, you could post it?

12:00PM 10 A Yes.

12:00PM 11 Q All right. So was there any sort of guidelines that you

12:00PM 12 used in posting these various cars online?

12:00PM 13 A The cars -- yes, the cars was posted like it was not from

12:00PM 14 a dealership.

12:00PM 15 Q Why was that?

12:00PM 16 A We was selling it as a private seller.

12:00PM 17 Q Who directed you to do that?

12:00PM 18 A Mike did.

12:00PM 19 Q Was there a reason why that you were aware of?

12:00PM 20 A No, not that I was aware of.

12:00PM 21 Q Did you ever include in any of these ads that these

12:00PM 22 vehicles had been purchased at auction?

12:00PM 23 A No.

12:00PM 24 Q Was that intentional?

12:00PM 25 A I don't think so.

12:00PM 1 Q So when you got a prospective buyer who responded to any
12:01PM 2 of these various online ads, how did the actual sale or
12:01PM 3 potential sale go from there?

12:01PM 4 A Usually meet up with the customer and it would be a cash
12:01PM 5 transaction.

12:01PM 6 Q Okay. So you would show them the car at that point,
12:01PM 7 right?

12:01PM 8 A Mm-hmm.

12:01PM 9 Q If they were interested, then it was the cash transaction?

12:01PM 10 A Yes.

12:01PM 11 Q Did you ever accept anything other than cash?

12:01PM 12 A No.

12:01PM 13 Q Were there any guarantee or warranty ever given on any of
12:01PM 14 the cars?

12:01PM 15 A No.

12:01PM 16 Q How were the cars sold?

12:01PM 17 A How was it sold?

12:01PM 18 Q Right. What was -- what was the condition that was --
12:01PM 19 that was --

12:01PM 20 A As is.

12:01PM 21 Q What did "as is" mean?

12:01PM 22 A Once you purchased the vehicle, it is -- that's it.
12:01PM 23 There's no return or anything like that.

12:01PM 24 Q All right. Did you ever have any complaints from cars
12:01PM 25 that were sold, even though they had been sold as is?

12:01PM 1 A Yes.

12:02PM 2 Q What was your response to complaints of if the car turned

12:02PM 3 out to be not working as -- as they thought it should be,

12:02PM 4 perhaps?

12:02PM 5 A This car was sold as is.

12:02PM 6 Q So no refunds were ever given?

12:02PM 7 A No.

12:02PM 8 Q No repairs were ever offered to be made?

12:02PM 9 A No.

12:02PM 10 Q Did anyone ever seek legal action against Hawaii Partners

12:02PM 11 or yourself based on any of the sales of these cars?

12:02PM 12 A Yes, it was me.

12:02PM 13 Q You were sued?

12:02PM 14 A Yes.

12:02PM 15 Q Individually?

12:02PM 16 A Yes.

12:02PM 17 Q Not as an agent of Hawaii Partners?

12:02PM 18 A No.

12:02PM 19 Q And why was the -- what was the basis for that lawsuit?

12:02PM 20 A We went to small claims, and I got sued for \$5,000.

12:02PM 21 Q Was that the sale price of the vehicle?

12:02PM 22 A Yes.

12:02PM 23 Q Do you recall what kind of vehicle this was?

12:02PM 24 A A Toyota Prius.

12:02PM 25 Q Was there a judgment or decision rendered --

12:02PM 1 A Yes.

12:02PM 2 Q -- by the court?

12:02PM 3 A Yes.

12:02PM 4 Q What was the decision?

12:03PM 5 A That I got sued for 5,000.

12:03PM 6 Q So the judgment was against you?

12:03PM 7 A Yes.

12:03PM 8 Q So there was a \$5,000 judgment against you?

12:03PM 9 A Yes.

12:03PM 10 Q All right. Did you report to Mr. Miske initially that

12:03PM 11 this lawsuit had been filed against you?

12:03PM 12 A Yes.

12:03PM 13 Q What was his response?

12:03PM 14 A His response was pretty much nothing. It wasn't --

12:03PM 15 Q Did he offer to -- to provide you with a lawyer for

12:03PM 16 this -- for this court hearing?

12:03PM 17 A No.

12:03PM 18 Q Did he provide to offer to come with you for the court

12:03PM 19 hearing?

12:03PM 20 A No.

12:03PM 21 Q So once you told him that there was a \$5,000 judgment

12:03PM 22 rendered against you, what did he say about that?

12:03PM 23 A Nothing. He just -- I just got caught with the 5,000.

12:03PM 24 Q But he didn't offer to -- to cover that judgment?

12:03PM 25 A No.

12:03PM 1 Q That car was sold as a Hawaii Partners car?

12:04PM 2 A No.

12:04PM 3 Q It was not?

12:04PM 4 A It wasn't sold as a Hawaii Partners car. It was sold as
12:04PM 5 -- it was my -- it was in my personal name.

12:04PM 6 Q Okay. Let me rephrase that. So when you sold these cars
12:04PM 7 as Mr. Miske's personal assistant working for Hawaii Partners,
12:04PM 8 were those all sold in your name?

12:04PM 9 A Yes.

12:04PM 10 Q On Craigslist?

12:04PM 11 A Mm-hmm.

12:04PM 12 Q And this was part of the selling it as a private owner
12:04PM 13 rather than as from a dealer?

12:04PM 14 A Yes.

12:04PM 15 Q Okay. So when you told Mr. Miske that you had this \$5,000
12:04PM 16 judgment against you, did he offer any explanation as to why he
12:04PM 17 wasn't going to help you with that \$5,000 obligation?

12:04PM 18 A He said that we went half on it.

12:04PM 19 Q What did he mean by you went half on it?

12:04PM 20 A That we went half on the Toyota Prius from the car
12:04PM 21 auction.

12:04PM 22 Q Had you gone half on it?

12:04PM 23 A No.

12:04PM 24 Q Had you ever gone half on any car that you purchased at
12:04PM 25 the auction for Hawaii Partners?

12:04PM 1 A Never.

12:04PM 2 Q Is that \$5,000 judgment still outstanding against you?

12:05PM 3 A Yes.

12:05PM 4 MR. INCIONG: Could we show Mr. Freitas Exhibit 1-571,

12:05PM 5 please, as well as the jury? This has been previously been

12:05PM 6 admitted, Your Honor.

12:05PM 7 THE COURT: Go ahead.

12:05PM 8 BY MR. INCIONG:

12:05PM 9 Q Mr. Freitas, do you see what's shown there in 1-571?

12:05PM 10 A Yes.

12:05PM 11 Q Do you recognize that?

12:05PM 12 A Yes.

12:05PM 13 Q What is that?

12:05PM 14 A Some of the vehicles Mike -- Hawaii Partners owned.

12:05PM 15 Q Mr. Freitas, I'm sorry, I may have to ask you to --

12:05PM 16 A Some of the vehicles Mike and Hawaii Partners owned.

12:05PM 17 Q Where is this particular writing board located?

12:05PM 18 A Mike's office.

12:05PM 19 Q This is the office you looked at photos before located at

12:05PM 20 940B Queen Street?

12:05PM 21 A Yes.

12:05PM 22 Q Do you recognize any of that handwriting?

12:05PM 23 A Yes.

12:05PM 24 Q Whose handwriting do you recognize?

12:06PM 25 A It's my handwriting and Mike's handwriting.

12:06PM 1 Q Starting -- could you circle first the handwriting you
12:06PM 2 recognize as your own?
12:06PM 3 A (Complying.)
12:06PM 4 Q And then could you now -- so you circled the word "Copart"
12:06PM 5 up in the upper right-hand corner, correct?
12:06PM 6 A Yes.
12:06PM 7 Q That's the second auction that you made reference to
12:06PM 8 earlier?
12:06PM 9 A Yes.
12:06PM 10 Q All right. Could you circle examples of Mr. Miske's
12:06PM 11 writing that you recognize?
12:06PM 12 A (Complying.)
12:06PM 13 Q So that's -- does that say "Step van" --
12:06PM 14 A Yes.
12:06PM 15 Q -- that you circled in the upper left-hand corner?
12:06PM 16 A Mm-hmm.
12:06PM 17 Q So is this board, did you use that regularly to record and
12:06PM 18 keep track of the various vehicles that Hawaii Partners was
12:06PM 19 purchasing and selling?
12:06PM 20 A We used this board and another board in his office.
12:06PM 21 Q Okay. Now, after you had successfully sold a vehicle and
12:06PM 22 accepted the cash, what did you do with the cash?
12:07PM 23 A I gave it to Mike.
12:07PM 24 Q Directly to him in person?
12:07PM 25 A Directly. If he wasn't there, I would leave it in his

12:07PM 1 office.

12:07PM 2 Q If he wasn't there and you left it in his office, was
12:07PM 3 there a specific particular place you were supposed to leave
12:07PM 4 the money?

12:07PM 5 A Using his first drawer.

12:07PM 6 MR. INCIONG: Can we go back to Exhibit 1-777, please?

12:07PM 7 BY MR. INCIONG:

12:07PM 8 Q Do you see the drawer that you're referring to in the desk
12:07PM 9 in this particular shot?

12:07PM 10 A Yes.

12:07PM 11 Q Could you circle on Exhibit 1-777 the drawer that you
12:07PM 12 would leave the cash.

12:07PM 13 A (Complying.)

12:07PM 14 Q So that's the top drawer on the left-hand side of the
12:07PM 15 desk; is that correct?

12:07PM 16 A Yes.

12:07PM 17 MR. INCIONG: Okay, thank you. We can take that down.

12:07PM 18 BY MR. INCIONG:

12:07PM 19 Q So how long did you work as Mr. Miske's personal assistant
12:08PM 20 for?

12:08PM 21 A On and off for about five years.

12:08PM 22 Q So did you see him every day?

12:08PM 23 A Every day.

12:08PM 24 Q Did you get close to him during that time?

12:08PM 25 A Yes, very close.

12:08PM 1 Q Did you get to know him well?

12:08PM 2 A Yes.

12:08PM 3 Q I think you said before you -- you were just a young kid
12:08PM 4 when you moved away. You didn't really know him at all prior
12:08PM 5 to moving back?

12:08PM 6 A Yes, correct.

12:08PM 7 Q How would you describe your relationship with Mr. Miske
12:08PM 8 after you became close, as you said?

12:08PM 9 A It was a good relationship.

12:08PM 10 Q Would you describe it as -- was he a mentor of sorts, a
12:08PM 11 father figure, big brother?

12:08PM 12 A Yes, I looked up to Mike.

12:08PM 13 Q Why did you look up to him?

12:08PM 14 A He's my older cousin. He's very smart. Owned multiple
12:08PM 15 businesses.

12:08PM 16 Q And you said you worked for him for about five years,
12:08PM 17 correct?

12:08PM 18 A Yes.

12:08PM 19 Q Was that straight through -- a straight-through period of
12:08PM 20 five years?

12:09PM 21 A It just was on and off.

12:09PM 22 Q Why on and off?

12:09PM 23 A Sometimes I'd get fired.

12:09PM 24 Q By Mr. Miske?

12:09PM 25 A Yes, and then rehired.

12:09PM 1 Q About how many times were you fired and rehired in that
12:09PM 2 five years would you say?

12:09PM 3 A More than a few times.

12:09PM 4 Q Why were you fired?

12:09PM 5 A If I didn't do something right or if I didn't show up to
12:09PM 6 work, he would fire me.

12:09PM 7 Q Not showing up to work sounds like a reasonable reason.
12:09PM 8 Wouldn't you agree?

12:09PM 9 A Yes.

12:09PM 10 Q Were there other reasons you were fired that you didn't
12:09PM 11 agree with?

12:09PM 12 A Mmm, yes.

12:09PM 13 Q Okay. Can you give an example?

12:09PM 14 A Just for not doing my research and stuff like that. I
12:09PM 15 think it was too serious -- like it wasn't that serious to get
12:09PM 16 fired.

12:09PM 17 Q Doing your research, what are you -- what are you
12:09PM 18 referring to?

12:09PM 19 A Research on the vehicles of Hawaii Partners.

12:09PM 20 Q Okay. So he would ask you to do research on cars that the
12:09PM 21 company was maybe interested in buying?

12:10PM 22 A Yes.

12:10PM 23 Q Were there any like long gaps during this time? So for
12:10PM 24 example, if you were fired, would you be rehired in days,
12:10PM 25 weeks, months, or did it vary? I mean how did that work?

12:10PM 1 A It just varied.

12:10PM 2 Q But you were -- you were rehired each time eventually?

12:10PM 3 A Yes.

12:10PM 4 Q All right. Did you remain as Mr. Miske's personal

12:10PM 5 assistant during that whole roughly five-year period or did you

12:10PM 6 move into other positions?

12:10PM 7 A I moved into sales for Kama'aina Termite and Pest Control.

12:10PM 8 Q Approximately what year did you begin doing sales for

12:10PM 9 Kama'aina Termite and Pest Control?

12:10PM 10 A I believe August 2019.

12:10PM 11 Q Okay. Was that at your request or Mr. Miske's request?

12:10PM 12 A He thought I would be great in sales, so I went to the

12:10PM 13 sales department.

12:10PM 14 Q Did you agree with that?

12:10PM 15 A Yes.

12:10PM 16 Q Is that something you were interested in doing?

12:10PM 17 A Yes.

12:10PM 18 Q Was the pay going to be better?

12:11PM 19 A The pay was going to be better.

12:11PM 20 Q What was the pay going to be?

12:11PM 21 A It was actually based on commission, so it depends on your

12:11PM 22 sales.

12:11PM 23 Q What were you selling exactly?

12:11PM 24 A Sentricon fumigations.

12:11PM 25 Q So various pest control services?

12:11PM 1 A Yes.

12:11PM 2 Q How were you -- how were you able -- or how were you
12:11PM 3 supposed to initiate contact with potential customers?

12:11PM 4 A We have -- the office gave us leads.

12:11PM 5 Q Gave you what?

12:11PM 6 A Leads.

12:11PM 7 Q Okay. What was the commission that you were expected to
12:11PM 8 get if you successfully obtained a sale or a contract?

12:11PM 9 A 15 percent.

12:11PM 10 Q Was there any salary or anything on top of it or was it
12:11PM 11 pure commission?

12:11PM 12 A Pure commission.

12:11PM 13 Q So you started that, you said, in the latter part of 2019?

12:11PM 14 A Yes.

12:11PM 15 Q All right. So I want to fast-forward then to the
12:11PM 16 following year, July of 2020. Do you recall anything of
12:12PM 17 significance happening in July of 2020 in your life?

12:12PM 18 A I got arrested at my apartment in Hawaii Kai.

12:12PM 19 Q Who were you arrested by?

12:12PM 20 A The FBI.

12:12PM 21 Q Were you advised of your Miranda rights at that time?

12:12PM 22 A Yes.

12:12PM 23 Q Were you aware what you were being arrested for at that
12:12PM 24 time?

12:12PM 25 A At that time, no.

12:12PM 1 Q You said that that was at your apartment in Hawaii Kai?

12:12PM 2 A Yes.

12:12PM 3 Q Was your apartment searched?

12:12PM 4 A No.

12:12PM 5 Q Was your person searched at that time?

12:12PM 6 A Yes, I was searched.

12:12PM 7 Q Was there anything of your personal property that was

12:12PM 8 seized from you at that time?

12:12PM 9 A Yes.

12:12PM 10 Q What was seized?

12:12PM 11 A My cell phone.

12:12PM 12 Q Were you booked and taken into custody?

12:12PM 13 A Yes.

12:12PM 14 Q Where were you taken into custody?

12:12PM 15 A FDC Honolulu.

12:12PM 16 Q That's the Federal Detention Center Honolulu?

12:12PM 17 A Yes.

12:12PM 18 Q Were you appointed an attorney?

12:13PM 19 A Yes.

12:13PM 20 Q Did you make an initial appearance on -- on the charges?

12:13PM 21 A Yes.

12:13PM 22 Q Did you understand then what you were being charged with?

12:13PM 23 A Yes.

12:13PM 24 Q What was your understanding you were being charged with?

12:13PM 25 A My understanding I was getting charged with conspiracy to

12:13PM 1 racketeering. That was Count 1. Count 12, conspiracy to
12:13PM 2 chemical weapon. Count 13 was conspiracy to -- not conspiracy
12:13PM 3 but chemical weapon charge.

12:13PM 4 Q Okay.

12:13PM 5 A And 16, conspiracy to sell drugs.

12:13PM 6 Q Okay.

12:13PM 7 THE COURT: Mr. Inciong, would now be an appropriate
12:13PM 8 time to take a break? It sounds like you're getting into
12:13PM 9 another area.

12:13PM 10 MR. INCIONG: Yeah, that's fine, Your Honor.

12:13PM 11 THE COURT: All right. It's now 12 -- just about
12:13PM 12 12:15. We have been going for about an hour and 45 minutes
12:13PM 13 since our last break.

12:13PM 14 So as we take our second and final break of the trial
12:13PM 15 day, I'll remind our jurors to please refrain from discussing
12:13PM 16 the substance of this case with anyone, including each other,
12:13PM 17 until I advise you otherwise; to refrain from accessing any
12:13PM 18 media or other accounts of this case that may be out there; and
12:13PM 19 finally, please do not conduct any independent investigation of
12:14PM 20 your own into the facts, circumstances or persons involved.

12:14PM 21 (Proceedings were recessed at 12:14 p.m. to 12:37
12:37PM 22 p.m.)

12:37PM 23 THE COURT: All right. Back from our second and final
12:37PM 24 break of the trial day.

12:37PM 25 Mr. Inciong, you may resume your direct examination of

12:37PM 1 Mr. Freitas when you are ready.

12:38PM 2 MR. INCIONG: Thank you, Your Honor.

12:38PM 3 BY MR. INCIONG:

12:38PM 4 Q Mr. Freitas, when we left off you had just testified that
12:38PM 5 you had been arrested in July of 2020 on the racketeering
12:38PM 6 conspiracy, chemical weapon charges, as well as the drug
12:38PM 7 distribution charges, correct?

12:38PM 8 A Yes.

12:38PM 9 Q Were you detained without bond initially on those charges?

12:38PM 10 A Yes.

12:38PM 11 Q So you remained at the Federal Detention Center Honolulu?

12:38PM 12 A Yes.

12:38PM 13 Q At some point did you decide to cooperate with law
12:38PM 14 enforcement and the government in this case?

12:38PM 15 A Yes.

12:38PM 16 Q When did you decide to cooperate?

12:38PM 17 A March 2021.

12:38PM 18 Q Would you tell the jury why you decided to cooperate?

12:38PM 19 A I have two kids that I have to support and be there and
12:38PM 20 raise them.

12:38PM 21 Q Did you enter into a proffer agreement with the government
12:38PM 22 at that time?

12:38PM 23 A Yes.

12:38PM 24 Q What are the primary terms of that proffer agreement as
12:38PM 25 you understand them?

12:38PM 1 A To tell the truth.

12:38PM 2 Q Did you also understand that you had some protections in
12:38PM 3 that proffer agreement as well?

12:38PM 4 A Yes.

12:39PM 5 Q What were those?

12:39PM 6 A Anything I say can't be used against me.

12:39PM 7 Q Did you meet then with agents of the government and the
12:39PM 8 FBI after that agreement was reached?

12:39PM 9 A Yes.

12:39PM 10 Q Were you at any point released on pretrial release from
12:39PM 11 the FDC while this case was pending?

12:39PM 12 A Yes.

12:39PM 13 Q When was that?

12:39PM 14 A January 12th, 2021 -- '22, I believe. Sorry, '22.

12:39PM 15 Q 2022?

12:39PM 16 A Yes.

12:39PM 17 Q So you were incarcerated for about a year and a half
12:39PM 18 before then?

12:39PM 19 A Yes.

12:39PM 20 Q Your attorney, did they file a motion for you to be
12:39PM 21 released?

12:39PM 22 A Yes.

12:39PM 23 Q That was granted?

12:39PM 24 A Yes.

12:39PM 25 Q Were there conditions that were part of that release?

12:39PM 1 A Yes.

12:39PM 2 Q Could you tell the jury what those conditions were?

12:39PM 3 A To find a job, to live at my dad's house, and to not get
12:40PM 4 into any trouble.

12:40PM 5 Q All right. Was there any sort of electronic monitoring
12:40PM 6 that was required?

12:40PM 7 A Yes, I have a GPS tracking device on my leg.

12:40PM 8 Q Was there any sort of money or surety that was required to
12:40PM 9 be placed?

12:40PM 10 A Yes.

12:40PM 11 Q What was that for?

12:40PM 12 A It was for my bond.

12:40PM 13 Q Who put up the money for the bond?

12:40PM 14 A My mom put up her house and I put up 5,000 cash.

12:40PM 15 Q Was there a regular drug testing as part of that as well?

12:40PM 16 A Yes.

12:40PM 17 Q Have you had any violations of your pretrial -- pretrial
12:40PM 18 release during that time?

12:40PM 19 A No, sir.

12:40PM 20 Q After you made the decision to cooperate, did you tell
12:40PM 21 anyone that you were cooperating with the government?

12:40PM 22 A No.

12:40PM 23 Q No one at all?

12:40PM 24 A I just told my mom.

12:40PM 25 Q So other than your mom, anyone?

12:40PM 1 A Other than my mom and my dad, that's it.

12:40PM 2 Q Okay. Your mom and your dad. Anyone else?

12:40PM 3 A No.

12:40PM 4 Q Did you later decide to resolve your case?

12:41PM 5 A Yes.

12:41PM 6 Q How did you decide to resolve your case?

12:41PM 7 A I pled guilty.

12:41PM 8 Q When did you plead guilty?

12:41PM 9 A March 2022.

12:41PM 10 Q Did you plead guilty pursuant to a plea agreement?

12:41PM 11 A Yes.

12:41PM 12 Q What did you plead guilty to?

12:41PM 13 A Conspiracy to racketeering and chemical weapon charge.

12:41PM 14 Q Why did you decide to plead guilty?

12:41PM 15 A To own up to what I did and -- that's pretty much it.

12:41PM 16 Q What was the last part?

12:41PM 17 A That's it.

12:41PM 18 Q Okay. Were there any benefits that you were hoping to

12:41PM 19 obtain from your plea agreement?

12:41PM 20 A Any benefits, yes.

12:41PM 21 Q Okay. So let's talk about some of the terms of your plea

12:41PM 22 agreement. You said you pled guilty to those two counts,

12:41PM 23 right?

12:41PM 24 A Yes.

12:41PM 25 Q Racketeering conspiracy and chemical weapons. So were

12:41PM 1 there a number of counts that were dismissed?

12:41PM 2 A Count 16 and Count 12, conspiracy to chemical weapon
12:42PM 3 attack and the drug conspiracy.

12:42PM 4 Q Were you aware of the maximum statutory penalties that
12:42PM 5 each of those dismissed counts carried?

12:42PM 6 A Yes.

12:42PM 7 Q What were those?

12:42PM 8 A Count 1, conspiracy to racketeering is zero to 20 years,
12:42PM 9 and the chemical and drugs was going to be up to life in
12:42PM 10 prison.

12:42PM 11 Q Okay. So did that drug charge carry a mandatory minimum
12:42PM 12 that you were aware of?

12:42PM 13 A Yes, ten years.

12:42PM 14 Q So those were dismissed as part of the plea agreement,
12:42PM 15 correct?

12:42PM 16 A Correct.

12:42PM 17 Q What about the charges that you pled guilty to? Starting
12:42PM 18 with the racketeering conspiracy, what is the maximum you're
12:42PM 19 facing for that?

12:42PM 20 A Zero to 20.

12:42PM 21 Q What is the maximum you're facing for the chemical weapons
12:42PM 22 count?

12:42PM 23 A Up to life in prison.

12:42PM 24 Q Were there any stipulations between yourself and the
12:42PM 25 government contained in the plea agreement other than those

12:43PM 1 dismissed counts?

12:43PM 2 A Yes.

12:43PM 3 Q Was there -- are you familiar with what is called the base
12:43PM 4 offense level?

12:43PM 5 A Yes.

12:43PM 6 Q What is that?

12:43PM 7 A Base offense level is where I want to be at, I want to
12:43PM 8 start at.

12:43PM 9 Q Did the plea agreement agree to place you at a base
12:43PM 10 offense level of 28?

12:43PM 11 A Yes.

12:43PM 12 Q Was there any agreement for any upward adjustment in that
12:43PM 13 base offense level because of the chemical that was used?

12:43PM 14 A It wouldn't be four-level increase because of a business
12:43PM 15 function.

12:43PM 16 Q Okay. Let me get to that in a second.

12:43PM 17 In regard to the type of chemical --

12:43PM 18 A It's a toxic chemical, yes --

12:43PM 19 Q So was there an upward adjustment --

12:43PM 20 A -- upward adjustment --

12:43PM 21 Q Was there an upward adjustment that you agreed to?

12:43PM 22 A Yes.

12:43PM 23 Q And I think you just referred to there was an agreement
12:43PM 24 not to have any adjustment based on any loss of business
12:43PM 25 basically, correct?

12:43PM 1 A Correct.

12:43PM 2 Q What about acceptance of responsibility?

12:43PM 3 A Two -- two levels down for early acceptance and
12:44PM 4 responsibility and one for early.

12:44PM 5 Q So based on all those adjustments then, did your attorney
12:44PM 6 give you an estimate as to what the possible guideline range
12:44PM 7 might be as to the sentence you're facing?

12:44PM 8 A Yes. I believe it was 70 to 81 months.

12:44PM 9 Q Did your plea agreement have a cooperation agreement as
12:44PM 10 part of it?

12:44PM 11 A Yes.

12:44PM 12 Q What did your cooperation agreement require of you?

12:44PM 13 A To tell the truth.

12:44PM 14 Q What are you hoping to gain from testifying here today?

12:44PM 15 A Leniency on my sentence.

12:44PM 16 Q Have you been promised any sort of reduction or leniency
12:44PM 17 in your sentence?

12:44PM 18 A No.

12:44PM 19 Q To your understanding, who will make the decision as to
12:44PM 20 whether you receive a reduced sentence?

12:44PM 21 A Yes.

12:44PM 22 Q Who will make that decision?

12:44PM 23 A The judge will.

12:44PM 24 Q Are you testifying today freely and voluntarily?

12:44PM 25 A Yes.

12:44PM 1 Q Have you been promised any benefit in all -- at all for
12:44PM 2 your testimony today?
12:44PM 3 A No.
12:44PM 4 Q Have you been threatened or coerced in any way?
12:45PM 5 A No.
12:45PM 6 Q Is it difficult for you to be here today?
12:45PM 7 A Very difficult.
12:45PM 8 Q Could you explain to the jury why it's hard for you to
12:45PM 9 testify in this matter.
12:45PM 10 A Mike's my cousin, and we -- we're very close.
12:45PM 11 Q Since you've pled guilty and have been out on pretrial
12:45PM 12 release, have you seen family members of yourself or
12:45PM 13 Mr. Miske's in the community?
12:45PM 14 A Yes.
12:45PM 15 Q Have you been to any family gatherings such as funerals,
12:45PM 16 birthday parties, things of that nature, where people were
12:45PM 17 present?
12:45PM 18 A Yes.
12:45PM 19 Q How were you treated at those -- at those gatherings?
12:45PM 20 A Nobody spoke with me.
12:45PM 21 Q How did that make you feel?
12:45PM 22 A It sucks.
12:45PM 23 Q Why?
12:45PM 24 A Because it's family. We are supposed to be loyal to
12:45PM 25 family.

12:45PM 1 Q Do you feel you're part of that family anymore?

12:45PM 2 A No.

12:45PM 3 Q Let's get back to your plea agreement for a second. You

12:45PM 4 mentioned that the first count you pled to is racketeering

12:46PM 5 conspiracy, correct?

12:46PM 6 A Yes.

12:46PM 7 Q So what did you do to make you guilty of conspiring to

12:46PM 8 violate the racketeering laws?

12:46PM 9 A Robberies and drugs.

12:46PM 10 Q Anything else?

12:46PM 11 A And the chemical weapon charge.

12:46PM 12 Q In your plea agreement did you admit to being a member of

12:46PM 13 the Miske Enterprise?

12:46PM 14 A Yes.

12:46PM 15 Q Who were some other members or associates of the Miske

12:46PM 16 Enterprise that you agreed to violate the racketeering laws

12:46PM 17 with?

12:46PM 18 A Jake Smith, Lance Bermudez, John Stancil.

12:46PM 19 Q Is John Stancil -- are you also related to him?

12:46PM 20 A Yes.

12:46PM 21 Q He is a cousin of yours as well?

12:46PM 22 A Yes.

12:46PM 23 Q What about Mr. Miske, was he part of the enterprise that

12:46PM 24 you were a part of?

12:46PM 25 A Yes.

12:46PM 1 Q Who was the leader of the Miske Enterprise?

12:47PM 2 A Mike.

12:47PM 3 Q Is there any doubt in your mind as to who was running that
12:47PM 4 organization?

12:47PM 5 A No.

12:47PM 6 Q In your plea agreement did you admit to committing certain
12:47PM 7 or specific what's known as racketeering acts?

12:47PM 8 A Yes.

12:47PM 9 Q Was chemical -- the chemical weapons offense you
12:47PM 10 referenced to, was that one of those chemical -- sorry, was
12:47PM 11 that one of those racketeering acts?

12:47PM 12 A Yes.

12:47PM 13 Q Were robberies another of those racketeering acts?

12:47PM 14 A Yes.

12:47PM 15 Q Was drug trafficking also one of those racketeering acts?

12:47PM 16 A Yes.

12:47PM 17 Q You mentioned assaults. Did you also engage in assaults
12:47PM 18 on the part of the enterprise?

12:47PM 19 A Yes.

12:47PM 20 Q Did you agree with Mr. Miske himself personally to commit
12:47PM 21 any of these racketeering acts?

12:47PM 22 A Yes.

12:47PM 23 Q Which ones?

12:47PM 24 MR. KENNEDY: Objection to the form of the question,

12:47PM 25 Your Honor.

12:47PM 1 THE COURT: Overruled.

12:47PM 2 MR. KENNEDY: It's also not racketeering acts.

12:47PM 3 THE COURT: Overruled. You may answer.

12:48PM 4 BY MR. INCIONG:

12:48PM 5 Q Did you agree with Mr. Miske to commit any of these

12:48PM 6 specific racketeering acts?

12:48PM 7 A Yes.

12:48PM 8 Q Which ones?

12:48PM 9 A Assaults. Chemical weapon charge.

12:48PM 10 Q Okay. So let's start with the chemical weapons charge.

12:48PM 11 MR. KENNEDY: Your Honor, at this time I would ask an

12:48PM 12 instruction that assaults are not racketeering acts.

12:48PM 13 THE COURT: Denied. Proceed.

12:48PM 14 MR. KENNEDY: Under the code.

12:48PM 15 THE COURT: Denied. Proceed.

12:48PM 16 BY MR. INCIONG:

12:48PM 17 Q Mr. Freitas, are you familiar with a nightclub by the name

12:48PM 18 of the District?

12:48PM 19 A Yes.

12:48PM 20 Q How are you familiar with the District Nightclub?

12:48PM 21 A It was one of the nightclubs here in Honolulu.

12:48PM 22 Q Had you frequented that nightclub ever?

12:48PM 23 A I've been to that nightclub before.

12:48PM 24 Q Okay. So in March of 2017, do you recall going to that

12:48PM 25 nightclub for a different reason?

12:48PM 1 A Yes.

12:48PM 2 Q How did that come about?

12:48PM 3 A Mike asked me to -- to release a toxic chemical at that
12:49PM 4 nightclub in March.

12:49PM 5 Q So was there -- had there been any conversation about this
12:49PM 6 before or did this just come up out of the blue?

12:49PM 7 A It came up out of the blue.

12:49PM 8 Q Mr. Miske asked you this personally?

12:49PM 9 A Yes.

12:49PM 10 Q In person, not over the phone or via text or anything like
12:49PM 11 that?

12:49PM 12 A No, personally.

12:49PM 13 Q Do you recall where this meeting took place?

12:49PM 14 A M Nightclub.

12:49PM 15 Q The M Nightclub, that was one of the businesses you
12:49PM 16 mentioned earlier that he owned, correct?

12:49PM 17 A Yes.

12:49PM 18 Q Did you spend time at the M Nightclub?

12:49PM 19 A Yes.

12:49PM 20 Q So were you just there socializing on that particular
12:49PM 21 night or were you there for any other reason?

12:49PM 22 A Just socializing that night.

12:49PM 23 Q Tell us how Mr. Miske approached you about this chemical
12:49PM 24 idea.

12:49PM 25 A He asked me to -- to go over there to that nightclub to

12:49PM 1 release what I thought was going to be tear gas at District
12:50PM 2 Nightclub.
12:50PM 3 Q Why did you think it was tear gas?
12:50PM 4 A Because he told me it was tear gas.
12:50PM 5 Q Did you have any idea or know why he wanted you to do it?
12:50PM 6 A They made a comment on social media about a post.
12:50PM 7 Q Were you aware of that or did Mr. Miske tell you that?
12:50PM 8 A He told me this.
12:50PM 9 Q Had you seen that post before or was it just information
12:50PM 10 that he relayed to you?
12:50PM 11 A No, I seen that post before.
12:50PM 12 Q So let me first ask you, you said you were familiar with
12:50PM 13 the District Nightclub. Let me show you first Exhibit 6-47.
12:50PM 14 MR. INCIONG: If we could show the jury as well,
12:50PM 15 please. This has been previously admitted.
12:50PM 16 THE COURT: Go ahead.
12:50PM 17 BY MR. INCIONG:
12:50PM 18 Q Do you recognize what's shown in that photograph?
12:50PM 19 A Yes.
12:50PM 20 Q How do you recognize that?
12:50PM 21 A It's the -- the side of the building is District
12:51PM 22 Nightclub.
12:51PM 23 Q Does that -- does that particular shot show the entrance
12:51PM 24 to the District Nightclub?
12:51PM 25 A No, it's the other side.

12:51PM 1 MR. INCIONG: Okay. Could we show the witness and the
12:51PM 2 jury Exhibit 6-74, please?
12:51PM 3 THE COURT: 6-47, has that been admitted, Counsel?
12:51PM 4 MR. INCIONG: 6-47. You know, I'm sorry, Your Honor,
12:51PM 5 it's a different angle, I believe, now that I --
12:51PM 6 MR. KENNEDY: I'll check as well, Your Honor.
12:51PM 7 I don't believe it has, Your Honor.
12:51PM 8 MR. INCIONG: One moment, Your Honor. My apologies.
12:52PM 9 I'm sorry, Your Honor, could we show 6-73? That's the
12:52PM 10 one I meant. My apologies.
12:52PM 11 THE COURT: Yes, 6-73 has been admitted.
12:52PM 12 MR. INCIONG: Thank you.
12:52PM 13 BY MR. INCIONG:
12:52PM 14 Q Same question, Mr. Freitas, do you recognize this as being
12:52PM 15 the District Nightclub?
12:52PM 16 A Yes.
12:52PM 17 Q So you mentioned that the entrance was on the other side.
12:52PM 18 MR. INCIONG: Could we show the witness and the jury
12:52PM 19 6-74, please?
12:52PM 20 BY MR. INCIONG:
12:52PM 21 Q Do you recognize that?
12:52PM 22 A Yes.
12:52PM 23 Q Is that the entry to the District Nightclub?
12:52PM 24 A Yes.
12:52PM 25 Q So when you're at the M Nightclub and Mr. Miske asks you

12:53PM 1 to drop what he called tear gas, did you agree to do so?

12:53PM 2 A At first I didn't want to do it.

12:53PM 3 Q Why?

12:53PM 4 A Because I didn't want to do it.

12:53PM 5 Q Did you -- did you tell him that?

12:53PM 6 A Yes, I did.

12:53PM 7 Q What was his response?

12:53PM 8 A "Stop being a faggot."

12:53PM 9 Q Is that how he would talk to you frequently?

12:53PM 10 A Not frequently.

12:53PM 11 Q When would he talk to you like that?

12:53PM 12 A When he was upset.

12:53PM 13 Q After he said that to you, did you agree to do it?

12:53PM 14 A Yes.

12:53PM 15 Q Did you feel pressured?

12:53PM 16 A Yes.

12:53PM 17 Q Why?

12:53PM 18 A Because he's my older cousin, and I look up to him and I
12:53PM 19 do what he says.

12:53PM 20 Q So after you had agreed, what was the plan?

12:53PM 21 A I left, and we drove in my Mercedes with Jake -- with Jake
12:53PM 22 Smith over to the nightclub, and I seen them wanding people in
12:54PM 23 the front door. And what I had it in was a Jagermeister bottle
12:54PM 24 with a metal cap.

12:54PM 25 Q Okay. Let me -- sorry to interrupt you, but let me -- let

12:54PM 1 me go back just a step or two first. So you're at the club and
12:54PM 2 you agreed to do it. How did you get this bottle that you
12:54PM 3 referenced?
12:54PM 4 A Jake Smith had it.
12:54PM 5 Q So who is Jake Smith?
12:54PM 6 A Jake Smith is a friend.
12:54PM 7 Q How did you know Jake Smith?
12:54PM 8 A I met him through John Stancil.
12:54PM 9 Q So were you with Jake Smith at the M Nightclub that night?
12:54PM 10 A Yes.
12:54PM 11 Q And let me ask you about that too. So was -- when you
12:54PM 12 were hanging out at the M Nightclub, did you know it to always
12:54PM 13 be the M Nightclub or did it change to a different name at some
12:54PM 14 point?
12:54PM 15 A It changed to a different name to Encore.
12:54PM 16 Q Do you recall when that occurred?
12:54PM 17 A No, I don't remember or recollect that day.
12:54PM 18 Q Did you always -- did you continue to refer to it as the
12:55PM 19 M --
12:55PM 20 A Yes.
12:55PM 21 Q -- or it was the M to you?
12:55PM 22 A Yes.
12:55PM 23 Q Okay. Other than the name change, were you aware that
12:55PM 24 whether or not the ownership had changed?
12:55PM 25 A The ownership had changed.

12:55PM 1 Q Who -- who would become the owner?

12:55PM 2 A Jason Yokoyama.

12:55PM 3 Q What was Mr. Yokoyama's relationship, if any, to

12:55PM 4 Mr. Miske?

12:55PM 5 A They was friends.

12:55PM 6 Q So was Mr. Miske still involved with the now Encore

12:55PM 7 Nightclub to your knowledge?

12:55PM 8 A I believe so.

12:55PM 9 Q So you're at the club with Jake Smith, correct?

12:55PM 10 A Mm-hmm.

12:55PM 11 Q So tell us now how you got this particular bottle after

12:55PM 12 you had agreed to -- to drop the tear gas.

12:55PM 13 A Jake had the bottle, and we went in my Mercedes, drove

12:55PM 14 over to the District Nightclub, and they was wandling people in

12:55PM 15 the front door with a metal detector wand. So I left -- I

12:56PM 16 didn't want to get busted with the bottle, so I went to Walmart

12:56PM 17 and purchased like a little ketchup bottle, I poured the

12:56PM 18 Jagermeister bottle into this ketchup bottle, and I went inside

12:56PM 19 to the District Nightclub, and I poured the tear gas at the

12:56PM 20 time into a trash can, and then I left. And when I returned

12:56PM 21 back to the nightclub --

12:56PM 22 Q Let me stop you there. So the reason you saw -- or the

12:56PM 23 reason you went to Walmart was because you saw the metal

12:56PM 24 detectors?

12:56PM 25 A Yes.

12:56PM 1 Q Why did the metal detectors concern you?

12:56PM 2 A Because the bottle would be going off because it had a
12:56PM 3 metal cap.

12:56PM 4 Q All right.

12:56PM 5 MR. INCIONG: Could we show Mr. Freitas and the jury
12:56PM 6 Exhibit 6-26, please, which has been previously admitted into
12:56PM 7 evidence?

12:56PM 8 THE COURT: Go ahead.

12:56PM 9 BY MR. INCIONG:

12:56PM 10 Q Mr. Freitas, does this look like the bottle that you were
12:56PM 11 given by Jake Smith?

12:57PM 12 A Yes.

12:57PM 13 Q And approximately what -- what size is this? It may be
12:57PM 14 hard to tell from this photo. Could you describe the size of
12:57PM 15 the bottle?

12:57PM 16 A It was maybe like a shot glass size.

12:57PM 17 Q All right. Is this one of the -- like the types of
12:57PM 18 bottles you find like in a hotel minibar, on the airplane,
12:57PM 19 something like that?

12:57PM 20 A Yes.

12:57PM 21 Q All right. So because of that cap you thought that might
12:57PM 22 go off on the metal detector?

12:57PM 23 A Yes.

12:57PM 24 MR. INCIONG: Could we show Exhibit 6-46, which has
12:57PM 25 been previously admitted into evidence, please, to the jury and

12:57PM 1 Mr. Freitas?

12:57PM 2 THE COURT: Yes.

12:57PM 3 BY MR. INCIONG:

12:57PM 4 Q Do you see this map, Mr. Freitas?

12:57PM 5 A Yes.

12:57PM 6 Q Do you see where the District Nightclub is located on that
12:57PM 7 map with that red pin?

12:57PM 8 A Yes.

12:57PM 9 Q Does that accurately show its location in reference to Ala
12:57PM 10 Moana mall, for example?

12:57PM 11 A Yes.

12:57PM 12 Q Now, you referenced a Walmart that you went to after you
12:57PM 13 saw the metal detectors. Do you see that on this map?

12:58PM 14 A Yes.

12:58PM 15 Q Could you circle that on the touch screen? You can use
12:58PM 16 your finger if you want.

12:58PM 17 A The Walmart?

12:58PM 18 Q Yes, please.

12:58PM 19 A (Complying.)

12:58PM 20 Q So is that relatively close to the District?

12:58PM 21 A Yes.

12:58PM 22 Q Okay. So you drove over there, and what -- what did you
12:58PM 23 obtain there?

12:58PM 24 A It was a little squeeze bottle, like a ketchup bottle.

12:58PM 25 Q What was the bottle made out of?

12:58PM 1 A Plastic.

12:58PM 2 Q All right. So what did you do with it?

12:58PM 3 A I bought it, and I returned back to the District and I
12:58PM 4 poured the Jagermeister tear gas into a clear ketchup bottle.

12:58PM 5 Q Where were you located when you did that?

12:58PM 6 A Across the street from District in Ala Moana parking lot.

12:58PM 7 Q Okay. So in the -- in the parking lot of the Ala Moana
12:58PM 8 mall?

12:58PM 9 A Yes.

12:58PM 10 Q Who was present with you at that time?

12:58PM 11 A Jake Smith.

12:58PM 12 Q Now, were you given any instructions as to how you should
12:59PM 13 pour out this particular substance or where you should pour it
12:59PM 14 or anything like that?

12:59PM 15 A No.

12:59PM 16 Q Were you told how much you should pour out?

12:59PM 17 A No.

12:59PM 18 Q That was just left to you to decide?

12:59PM 19 A Yes.

12:59PM 20 Q So you said you went and you poured it into a trash can?

12:59PM 21 A Yes.

12:59PM 22 Q Where did you -- where were you concealing this plastic
12:59PM 23 squeeze bottle when you went into the club?

12:59PM 24 A In my pants.

12:59PM 25 Q Did you empty the entire bottle in the club?

12:59PM 1 A No. I did like a squirt into a trash can.

12:59PM 2 Q Where was that trash can located?

12:59PM 3 A By the dance floor.

12:59PM 4 Q Did you stay for any period of time or did you leave
12:59PM 5 immediately?

12:59PM 6 A I left immediately.

12:59PM 7 Q At this point as you're leaving the club, did you see any
12:59PM 8 signs of any effect of this substance in the club?

12:59PM 9 A No.

12:59PM 10 Q Did you yourself experience any signs or symptoms from
12:59PM 11 having any contact with this -- with this chemical?

12:59PM 12 A Yes.

12:59PM 13 Q What was that?

01:00PM 14 A Eyes was burning, like cut onions or something.

01:00PM 15 Q All right. Where did you go from there?

01:00PM 16 A I went back to the -- to the nightclub.

01:00PM 17 Q Did you go to your car first?

01:00PM 18 A Yeah, I went back to the car, we drove over to the
01:00PM 19 nightclub.

01:00PM 20 Q So this was your car?

01:00PM 21 A Yes.

01:00PM 22 Q What were you driving that night?

01:00PM 23 A A Mercedes, a black Mercedes-Benz.

01:00PM 24 Q And Jake Smith was your passenger?

01:00PM 25 A Yes.

01:00PM 1 Q On the way back to the club were you experiencing any
01:00PM 2 symptoms?
01:00PM 3 A Yes.
01:00PM 4 Q Describe what those are for the jury.
01:00PM 5 A Burning in the eyes.
01:00PM 6 Q Anything else?
01:00PM 7 A No.
01:00PM 8 Q Was Mr. Smith experiencing the same symptoms?
01:00PM 9 A Yes.
01:00PM 10 Q So why did you go back to the M Nightclub?
01:00PM 11 A To report back to Mike.
01:00PM 12 Q Was Mr. Miske there?
01:00PM 13 A Yes.
01:00PM 14 Q Did you tell him what you had done?
01:00PM 15 A Yes.
01:00PM 16 Q What was his response?
01:00PM 17 A How was their reaction on what happened?
01:00PM 18 Q What did you tell him?
01:00PM 19 A I told him what happened, and he asked me if anybody left
01:01PM 20 the nightclub.
01:01PM 21 Q Did you know if they had or not?
01:01PM 22 A No, I didn't -- at that time I didn't.
01:01PM 23 Q Did you tell him that?
01:01PM 24 A Yes.
01:01PM 25 Q And what did he say?

01:01PM 1 A Go back there.

01:01PM 2 Q Why?

01:01PM 3 A To see the reaction.

01:01PM 4 Q Did he want you to just look yourself or did he want you

01:01PM 5 to obtain any sort of evidence of it?

01:01PM 6 A He wanted me to take photos.

01:01PM 7 Q So did you agree to drive back?

01:01PM 8 A Yes.

01:01PM 9 Q Who did you drive back with, if anyone?

01:01PM 10 A Keoni --

01:01PM 11 Q Who is Keoni?

01:01PM 12 A Keoni Adric.

01:01PM 13 Q Keoni Adric did not go with you the first time, correct?

01:01PM 14 A No.

01:01PM 15 Q That was just Mr. Smith?

01:01PM 16 A Yes.

01:01PM 17 Q Why did Keoni Adric go with you?

01:01PM 18 A Because I didn't want to go back with the same vehicle, so

01:01PM 19 I asked him if he can drive.

01:01PM 20 Q So you took his car?

01:01PM 21 A Yes.

01:01PM 22 Q What kind of car was that?

01:01PM 23 A Also a white Mercedes.

01:01PM 24 Q Different --

01:01PM 25 A Different white --

01:01PM 1 Q -- color?

01:01PM 2 A -- same type.

01:02PM 3 Q What did you see when you went back to the District

01:02PM 4 Nightclub with Mr. Adric?

01:02PM 5 A I seen HPD and I seen fire trucks.

01:02PM 6 Q What else?

01:02PM 7 A And people scrambling out from the District.

01:02PM 8 Q Did you stop or did you just drive by slowly or how did

01:02PM 9 you see?

01:02PM 10 A I drove by slowly.

01:02PM 11 Q Did you stick around?

01:02PM 12 A No.

01:02PM 13 Q Did you take pictures?

01:02PM 14 A I don't recall if I took pictures or not.

01:02PM 15 Q Where did you go from there?

01:02PM 16 A I went back to the nightclub.

01:02PM 17 Q Did you report what you had seen to Mr. Miske at that

01:02PM 18 time?

01:02PM 19 A Yes.

01:02PM 20 Q What did he say?

01:02PM 21 A No reaction.

01:02PM 22 Q Now, on the way back, are you -- had the symptoms that you

01:02PM 23 were experiencing earlier subsided or the same or stronger?

01:02PM 24 What were -- what were you feeling at that point?

01:02PM 25 A When I returned back?

01:02PM 1 Q Yes.

01:02PM 2 A Nothing.

01:02PM 3 Q Now, the bottle that you used, the squeeze bottle, what

01:02PM 4 happened to that?

01:03PM 5 A I believe Jake Smith had it. There was still some

01:03PM 6 remaining inside that bottle.

01:03PM 7 Q What about the original Jagermeister bottle that you

01:03PM 8 poured that into, what happened to that?

01:03PM 9 A I don't know if I threw it away or if Jake had it.

01:03PM 10 Q Now, the very next night in March of 2017, were you

01:03PM 11 involved in any other chemical attacks?

01:03PM 12 A No.

01:03PM 13 Q Were you involved in any other chemical attacks at any

01:03PM 14 time after that?

01:03PM 15 A No.

01:03PM 16 Q Were you in the area of that District Nightclub the

01:03PM 17 following night?

01:03PM 18 A I might have been at District -- Addiction Nightclub.

01:03PM 19 Q What is Addiction?

01:03PM 20 A It's in the Modern -- located at the Modern hotel.

01:03PM 21 Q That's a club as well?

01:03PM 22 A Yes.

01:03PM 23 Q Okay. What were you doing there?

01:03PM 24 A Having a few drinks, hanging out with some friends.

01:04PM 25 Q Same friends as the night before or a different group?

01:04PM 1 A A different group.

01:04PM 2 Q Not Mr. Smith?

01:04PM 3 A No.

01:04PM 4 Q Not Mr. Stancil?

01:04PM 5 A No.

01:04PM 6 Q Not Mr. Miske?

01:04PM 7 A No.

01:04PM 8 Q Let me fast-forward about a month or so after you released

01:04PM 9 the -- what you believed to be tear gas at the District. Were

01:04PM 10 you stopped by Honolulu police for a traffic stop in Kailua?

01:04PM 11 A Yes.

01:04PM 12 Q Who was with you at the time of the traffic stop?

01:04PM 13 A Jake Smith and his two friends.

01:04PM 14 Q Did you know who those two friends were?

01:04PM 15 A No -- at that time, no.

01:04PM 16 Q What was the reason for the traffic stop?

01:04PM 17 A No front license plates.

01:04PM 18 MR. INCIONG: Could we show the witness only, please,

01:04PM 19 Exhibit 6-37?

01:04PM 20 BY MR. INCIONG:

01:04PM 21 Q Mr. Freitas, do you recognize what's shown in the

01:04PM 22 photograph in Exhibit 6-37?

01:05PM 23 A Yes.

01:05PM 24 Q How do you recognize that?

01:05PM 25 A That's my Mercedes.

01:05PM 1 Q And is this the car that you were driving in when you were
01:05PM 2 stopped by Honolulu police in Kailua in April of 2017?
01:05PM 3 A Yes.
01:05PM 4 Q Does that photo accurately show your vehicle at that time?
01:05PM 5 A Yes.
01:05PM 6 MR. INCIONG: Your Honor, I would move to admit 6-37.
01:05PM 7 THE COURT: Any objection?
01:05PM 8 MR. KENNEDY: No objection.
01:05PM 9 THE COURT: Without objection, 6-37 is admitted. You
01:05PM 10 may publish.
01:05PM 11 (Exhibit 6-37 was received in evidence.)
01:05PM 12 MR. INCIONG: Thank you, Your Honor.
01:05PM 13 BY MR. INCIONG:
01:05PM 14 Q Mr. Freitas, this is the car that you drove from the M or
01:05PM 15 Encore Nightclub to the District Nightclub to release the tear
01:05PM 16 gas?
01:05PM 17 A Yes.
01:05PM 18 Q This is the same car that you were stopped by Honolulu
01:05PM 19 police in Kailua about a month later?
01:05PM 20 A Yes.
01:05PM 21 MR. INCIONG: Could we show the witness only, please,
01:05PM 22 Exhibit 6-32?
01:05PM 23 BY MR. INCIONG:
01:05PM 24 Q Do you recognize that, sir?
01:05PM 25 A Yes.

01:05PM 1 Q How do you recognize that?

01:05PM 2 A That's me and Jake Smith.

01:05PM 3 Q Is that photo taken when you were pulled over by Honolulu
01:06PM 4 police in Kailua in April of 2017?

01:06PM 5 A Yes.

01:06PM 6 Q Does that accurately show yourself and Mr. Smith at that
01:06PM 7 time?

01:06PM 8 A Yes.

01:06PM 9 MR. INCIONG: Your Honor, I would move to admit 6-32.

01:06PM 10 THE COURT: Mr. Kennedy, any objection?

01:06PM 11 MR. KENNEDY: No objection.

01:06PM 12 THE COURT: Without objection, 6-32 is admitted. You
01:06PM 13 may publish that as well.

01:06PM 14 (Exhibit 6-32 was received in evidence.)

01:06PM 15 MR. INCIONG: Thank you, Your Honor.

01:06PM 16 BY MR. INCIONG,

01:06PM 17 Q So, Mr. Freitas, you're in the driver's seat; is that
01:06PM 18 correct?

01:06PM 19 A Yes.

01:06PM 20 Q And who is that seated in the passenger seat?

01:06PM 21 A Jake Smith.

01:06PM 22 Q And Jake Smith is the person who gave you the Jagermeister
01:06PM 23 bottle on the night that you emptied its contents into the
01:06PM 24 squeeze bottle and then dispersed it at the District Nightclub?

01:06PM 25 A Yes.

01:06PM 1 MR. INCIONG: Could we show the witness Exhibit 6-29,
01:06PM 2 please, which has been previously admitted earlier today?
01:06PM 3 THE COURT: Yes.
01:06PM 4 MR. INCIONG: Thank you, Your Honor.
01:06PM 5 BY MR. INCIONG:
01:07PM 6 Q Do you recognize that backpack, Mr. Freitas?
01:07PM 7 A Yes.
01:07PM 8 Q How do you know that backpack?
01:07PM 9 A That's Jake's backpack.
01:07PM 10 Q Have you seen him with that?
01:07PM 11 A Yes.
01:07PM 12 Q Did he have that with him on the day you were stopped by
01:07PM 13 the Kailua police at the traffic stop in the pictures we just
01:07PM 14 looked at?
01:07PM 15 A Yes.
01:07PM 16 Q Did you know what was inside that particular backpack?
01:07PM 17 A I knew Jake carried a backpack and it has guns inside.
01:07PM 18 Q You had that knowledge, right?
01:07PM 19 A Mm-hmm.
01:07PM 20 Q On that particular day did you look inside that backpack?
01:07PM 21 A No.
01:07PM 22 Q Did you -- so did you know specifically what was inside
01:07PM 23 there?
01:07PM 24 A No.
01:07PM 25 MR. INCIONG: Could I show again 6-26 to Mr. Freitas,

01:07PM 1 which was previously admitted today?

01:07PM 2 THE COURT: Go ahead.

01:07PM 3 BY MR. INCIONG:

01:07PM 4 Q And you recognize this as being the same type of

01:07PM 5 Jagermeister bottle that you were given to disperse at the

01:08PM 6 District Nightclub?

01:08PM 7 A Yes.

01:08PM 8 Q Did you know that a similar or same Jagermeister bottle

01:08PM 9 was in that backpack?

01:08PM 10 A No, I didn't know.

01:08PM 11 Q So when you were stopped by the police, were you asked

01:08PM 12 about this backpack?

01:08PM 13 A Yes.

01:08PM 14 Q And what was asked, whose -- who it belonged to?

01:08PM 15 A Yes.

01:08PM 16 Q Was that asked of you or of Mr. Smith?

01:08PM 17 A It was asked by HPD whose backpack it was.

01:08PM 18 Q And whose -- what did you answer?

01:08PM 19 A It wasn't my backpack.

01:08PM 20 Q Did you tell HPD that?

01:08PM 21 A Yes.

01:08PM 22 Q And were you present when Mr. Smith was asked that?

01:08PM 23 A No.

01:08PM 24 Q Were you allowed to leave the scene that day?

01:08PM 25 A Yes.

01:08PM 1 Q Was Mr. Smith allowed to leave the scene?

01:08PM 2 A Yes.

01:08PM 3 Q Was the backpack with you or left behind?

01:08PM 4 A Left behind.

01:08PM 5 Q Who took custody of that backpack?

01:09PM 6 A HPD.

01:09PM 7 Q Okay. So let me shift gears with you a little bit here.

01:09PM 8 You mentioned that to further the enterprise you had committed

01:09PM 9 a number of assaults you admitted to in part of your plea

01:09PM 10 agreement, correct?

01:09PM 11 A Yes.

01:09PM 12 Q Who directed you to commit these assaults?

01:09PM 13 A Mike did.

01:09PM 14 Q That's Mike Miske?

01:09PM 15 A Mm-hmm.

01:09PM 16 Q So did you know an individual by the name of Jonathan

01:09PM 17 Fraser?

01:09PM 18 A Yes.

01:09PM 19 Q How did you know of Jonathan Fraser?

01:09PM 20 A He was Caleb's friend.

01:09PM 21 Q Who is Caleb?

01:09PM 22 A My cousin.

01:09PM 23 Q Do you know his last name?

01:09PM 24 A Miske.

01:09PM 25 Q Is that Mike Miske's son?

01:09PM 1 A Yes.

01:09PM 2 Q So when you moved back from the Mainland in approximately

01:10PM 3 2013, did you get to know Caleb Miske at that time?

01:10PM 4 A Yes.

01:10PM 5 Q How would you describe your relationship with Caleb?

01:10PM 6 A Very close.

01:10PM 7 Q You're closer -- closer in age to Caleb than you were to

01:10PM 8 Mr. Miske?

01:10PM 9 A Yes.

01:10PM 10 Q Did you get to know Mr. Frasure as a result of that?

01:10PM 11 A Yes.

01:10PM 12 Q So when you first came back in 2013, did you know of

01:10PM 13 Mr. Frasure at that point?

01:10PM 14 A 2013, no.

01:10PM 15 Q Moving forward into 2014 after you had been back for a

01:10PM 16 little while, do you recall if you met Mr. Frasure by that

01:10PM 17 time?

01:10PM 18 A Yes.

01:10PM 19 Q How had you met him, through Caleb?

01:10PM 20 A Through Caleb.

01:10PM 21 Q Do you recall Mr. Miske speaking with you about a watch

01:10PM 22 and mentioning Mr. Frasure in regard to that watch?

01:10PM 23 A Yes.

01:10PM 24 Q Tell the jury what -- how that came up.

01:10PM 25 A Jonathan Fraser stole a Rolex watch from Mike's office.

01:11PM 1 Q Mr. Miske told you that or you knew that independently?

01:11PM 2 A He told me that.

01:11PM 3 Q Mike told you that?

01:11PM 4 A Yes.

01:11PM 5 Q Was he upset about that?

01:11PM 6 A Yes.

01:11PM 7 Q Were you asked to do anything in that regard?

01:11PM 8 A To see if Jonathan Fraser pawned the watch at any pawn

01:11PM 9 shops.

01:11PM 10 Q That was the direction you were given by Mr. Miske?

01:11PM 11 A Yes.

01:11PM 12 Q So any pawn shop?

01:11PM 13 A Yes. All pawn shops in the area.

01:11PM 14 Q Did you learn that there were quite a few pawn shops in

01:11PM 15 the area?

01:11PM 16 A There -- yes, there's a lot.

01:11PM 17 Q Did you go to every single pawn shop to see if this watch

01:11PM 18 was pawned there?

01:11PM 19 A To a lot of pawn shops to look.

01:11PM 20 Q Physically going into the shops or calling or a

01:11PM 21 combination?

01:11PM 22 A No, I actually went just went into every single shop to

01:11PM 23 see if they did.

01:11PM 24 Q How long did that take you?

01:11PM 25 A A long time.

01:12PM 1 Q Were you able to locate the watch?

01:12PM 2 A No.

01:12PM 3 Q Did you report that back to Mr. Miske?

01:12PM 4 A Yes.

01:12PM 5 Q Did he ask you to do anything else after that?

01:12PM 6 A Yes.

01:12PM 7 Q What did he ask you to do?

01:12PM 8 A We found out Jonathan Fraser was at the District Park.

01:12PM 9 Q Which District Park?

01:12PM 10 A In Kaneohe.

01:12PM 11 Q Were you familiar with that District Park?

01:12PM 12 A Yes.

01:12PM 13 Q So what was the significance of Mr. Frasure being at that

01:12PM 14 park?

01:12PM 15 A I don't know what he was doing at that park, but he was at

01:12PM 16 that park.

01:12PM 17 Q Okay. But what did Mr. Miske want you to do, if anything?

01:12PM 18 A To locate the watch and get it back from Jonathan.

01:12PM 19 Q So he wanted you to go to that park to see if you could

01:12PM 20 get it back there?

01:12PM 21 A Yes.

01:12PM 22 Q Did you go there?

01:12PM 23 A Yes.

01:12PM 24 Q Who did you go there with?

01:12PM 25 A John Stancil.

01:12PM 1 Q This is your cousin that you referenced earlier?

01:12PM 2 A Yes.

01:12PM 3 MR. INCIONG: Could we show the witness what I believe
01:12PM 4 is marked as Exhibit 1-40, which has been previously admitted?

01:13PM 5 THE COURT: Go ahead.

01:13PM 6 MR. INCIONG: And if we could show the jury as well,
01:13PM 7 please.

01:13PM 8 BY MR. INCIONG:

01:13PM 9 Q That's Mr. Stancil that you went with?

01:13PM 10 A Yes.

01:13PM 11 Q Anyone else go with you?

01:13PM 12 A No.

01:13PM 13 Q So when you arrived at the Kaneohe District Park, were you
01:13PM 14 able to locate Mr. Frasure?

01:13PM 15 A Yes, I seen him inside the van with his girlfriend.

01:13PM 16 Q What did you do?

01:13PM 17 A I tried to take the keys out of the van.

01:13PM 18 Q Why?

01:13PM 19 A So he wouldn't be able to go anywhere.

01:13PM 20 Q Were you able to do that?

01:13PM 21 A No.

01:13PM 22 Q What happened?

01:13PM 23 A He took off.

01:13PM 24 Q Was he driving?

01:13PM 25 A No, I believe it was his girlfriend.

01:13PM 1 Q They took off in the vehicle that they were in?

01:13PM 2 A Yes.

01:13PM 3 Q Did you follow?

01:13PM 4 A Yes.

01:13PM 5 Q On foot or a vehicle or --

01:13PM 6 A In a vehicle.

01:13PM 7 Q Who was driving the vehicle you were in?

01:13PM 8 A John was.

01:13PM 9 Q How would you describe this following? Was it a following

01:13PM 10 or was it a chase?

01:13PM 11 A It was kind of like a chase.

01:13PM 12 Q Where did this chase take place?

01:14PM 13 A Kaneohe District Park.

01:14PM 14 Q Where did you go from there?

01:14PM 15 A I think by the freeway.

01:14PM 16 Q The chase continued out onto the freeway?

01:14PM 17 A Yeah, to the main street and then it stopped by the

01:14PM 18 freeway.

01:14PM 19 Q Were you able to catch them?

01:14PM 20 A No.

01:14PM 21 Q Why did you stop the chase?

01:14PM 22 A We just stopped the chase.

01:14PM 23 Q Were you able -- ever able to catch up with and find

01:14PM 24 Mr. Frasure later that day?

01:14PM 25 A No.

01:14PM 1 MR. INCIONG: If I could show Mr. Freitas Exhibit 2-1,
01:14PM 2 please, just to the witness only.
01:14PM 3 BY MR. INCIONG:
01:14PM 4 Q Mr. Freitas, do you recognize who is shown in this
01:14PM 5 photograph?
01:14PM 6 A Yes.
01:14PM 7 Q Who is that?
01:14PM 8 A Jonathan Fraser.
01:14PM 9 Q And does that photo show Mr. Frasure how he appeared when
01:15PM 10 you saw him at the Kaneohe District Park in November of 2014?
01:15PM 11 A No. I didn't see him. It was dark and I couldn't see
01:15PM 12 him. He was inside the van.
01:15PM 13 Q Okay. You say -- when you say you couldn't -- then how
01:15PM 14 did you know it was him?
01:15PM 15 A Because it was his girlfriend by this -- by his -- how he
01:15PM 16 looked.
01:15PM 17 Q Okay.
01:15PM 18 A It was dark, so I couldn't really like see, but he was
01:15PM 19 inside the car with his girlfriend Ashley.
01:15PM 20 Q Okay. Let me -- let me focus then.
01:15PM 21 MR. INCIONG: And if we can zoom in on from the
01:15PM 22 shoulders up to see if that would help of this particular
01:15PM 23 photo.
01:15PM 24 BY MR. INCIONG:
01:15PM 25 Q Are you able to recognize there?

01:15PM 1 A Yes.

01:15PM 2 Q Okay. Is this the person that you saw in the vehicle that
01:15PM 3 you described that you ended up chasing at the Kaneohe District
01:15PM 4 Park?

01:15PM 5 A Yes.

01:15PM 6 MR. INCIONG: Your Honor, I would move to admit
01:15PM 7 Exhibit 2-1.

01:15PM 8 THE COURT: Any objection?

01:15PM 9 MR. KENNEDY: No objection, Your Honor.

01:15PM 10 THE COURT: Without objection, 2-1 is admitted.

01:15PM 11 (Exhibit 2-1 was received in evidence.)

01:15PM 12 MR. INCIONG: Could I publish that, Your Honor?

01:15PM 13 THE COURT: Yes.

01:16PM 14 BY MR. INCIONG:

01:16PM 15 Q Did you have any -- was there any conversation or
01:16PM 16 interaction with Mr. Frasure or the -- who you described as the
01:16PM 17 girlfriend when you were trying to take the keys out of the
01:16PM 18 car?

01:16PM 19 A No, she was just screaming.

01:16PM 20 MR. INCIONG: Could we show Mr. Freitas Exhibit 2-11
01:16PM 21 next, please, the witness only. Thank you.

01:16PM 22 BY MR. INCIONG:

01:16PM 23 Q Do you recognize the map in 2-11, sir?

01:16PM 24 A Yes.

01:16PM 25 Q What part of the island does that map show?

01:16PM 1 A Kaneohe side.

01:16PM 2 Q Are you familiar with that side?

01:16PM 3 A Yes.

01:16PM 4 Q Does that accurately show Kaneohe, which includes the

01:16PM 5 Kaneohe District Park?

01:16PM 6 A Yes.

01:16PM 7 MR. INCIONG: Your Honor, I would move to admit 2-11,

01:16PM 8 please.

01:16PM 9 THE COURT: Any objection?

01:16PM 10 MR. KENNEDY: No objection.

01:16PM 11 THE COURT: 2-11 is admitted without objection. You

01:16PM 12 may publish.

01:16PM 13 (Exhibit 2-11 was received in evidence.)

01:16PM 14 MR. INCIONG: Thank you, Your Honor.

01:16PM 15 BY MR. INCIONG:

01:16PM 16 Q So this is Kaneohe in general, correct, Mr. Freitas?

01:17PM 17 A Yes.

01:17PM 18 Q Is there a tag anywhere that shows correctly where the

01:17PM 19 Kaneohe District Park is located?

01:17PM 20 A Yes.

01:17PM 21 Q Could you circle that on the screen, please.

01:17PM 22 A (Complying.)

01:17PM 23 Q So that's where you went at Mr. Miske's request on that

01:17PM 24 day?

01:17PM 25 A Yes.

01:17PM 1 Q And you came from the town side?

01:17PM 2 A Yes.

01:17PM 3 MR. INCIONG: Could we show Mr. Freitas only

01:17PM 4 Exhibit 2-12 next, please.

01:17PM 5 And these are all from the government's first original

01:17PM 6 witness list, Your Honor.

01:17PM 7 BY MR. INCIONG:

01:17PM 8 Q Mr. Freitas, do you recognize this map?

01:17PM 9 A Yes.

01:17PM 10 Q What's shown there?

01:17PM 11 A The Kaneohe District Park.

01:17PM 12 Q Does that accurately show the map in the immediate

01:17PM 13 surrounding areas as you're familiar with it?

01:17PM 14 A Yes.

01:17PM 15 MR. INCIONG: Your Honor, I would move to admit 2-12.

01:17PM 16 THE COURT: Any objection?

01:17PM 17 MR. KENNEDY: No objection.

01:17PM 18 THE COURT: 2-12 is admitted without objection. You

01:18PM 19 may publish that as well.

01:18PM 20 (Exhibit 2-12 was received in evidence.)

01:18PM 21 MR. INCIONG: Thank you, Your Honor.

01:18PM 22 BY MR. INCIONG:

01:18PM 23 Q So, Mr. Freitas, this is -- is that green, you know,

01:18PM 24 roughly rectangle shape right in the middle of that the Kaneohe

01:18PM 25 District Park?

01:18PM 1 A Yes.

01:18PM 2 Q And does it show the freeway that you referred to that the
01:18PM 3 chase led on to out from the District Park?

01:18PM 4 A Yes.

01:18PM 5 Q Could you just draw a line along that what you -- that
01:18PM 6 freeway where the chase occurred.

01:18PM 7 A (Complying.)

01:18PM 8 Q Okay. So your -- that's the Kahekili Highway; is that
01:18PM 9 correct?

01:18PM 10 A Yes.

01:18PM 11 MR. INCIONG: Could we show Mr. Freitas only
01:18PM 12 Exhibit 2-13 next, please?

01:18PM 13 BY MR. INCIONG:

01:18PM 14 Q Do you recognize that, Mr. Freitas?

01:18PM 15 A Yes.

01:18PM 16 Q How do you recognize that?

01:18PM 17 A This is where Jonathan was.

01:18PM 18 Q Is that the entryway into the Kaneohe District Park?

01:18PM 19 A Yes.

01:18PM 20 Q Does that accurately show that entryway as it appeared
01:18PM 21 when you were there in November of 2014?

01:19PM 22 A Yes.

01:19PM 23 MR. INCIONG: Your Honor, I would move to admit 2-13.

01:19PM 24 THE COURT: Counsel, any objection?

01:19PM 25 MR. KENNEDY: No objection, Your Honor.

01:19PM 1 THE COURT: Without objection, 2-13 is admitted. You
01:19PM 2 may publish.

01:19PM 3 (Exhibit 2-13 was received in evidence.)

01:19PM 4 MR. INCIONG: Thank you, Your Honor.

01:19PM 5 BY MR. INCIONG:

01:19PM 6 Q So that's the entry or exit from the District Park,
01:19PM 7 Mr. Freitas?

01:19PM 8 A Yes.

01:19PM 9 Q And is that where you entered in to, first of all?

01:19PM 10 A Around that area, yes.

01:19PM 11 Q Okay. And then is this where basically you ended up
01:19PM 12 leaving and following the car that Mr. Frasure was in out on to
01:19PM 13 the Kahekili Highway?

01:19PM 14 A Yes.

01:19PM 15 MR. INCIONG: Finally, could we show to Mr. Freitas
01:19PM 16 only Exhibit 2-16?

01:19PM 17 BY MR. INCIONG:

01:19PM 18 Q Do you recognize that particular view, Mr. Freitas?

01:19PM 19 A Yes.

01:19PM 20 Q Does this accurately show another section of the Kaneohe
01:19PM 21 surroundings on the Windward side?

01:20PM 22 A Yes.

01:20PM 23 MR. INCIONG: Your Honor, I would move to admit 2-16.

01:20PM 24 THE COURT: Any objection?

01:20PM 25 MR. KENNEDY: No objection.

01:20PM 1 THE COURT: 2-16 is admitted without objection. You

01:20PM 2 may publish.

01:20PM 3 (Exhibit 2-16 was received in evidence.)

01:20PM 4 MR. INCIONG: Thank you, Your Honor.

01:20PM 5 BY MR. INCIONG:

01:20PM 6 Q And once again, Mr. Freitas, you recognize this as showing

01:20PM 7 the Kaneohe surroundings?

01:20PM 8 A Yes.

01:20PM 9 Q You see where the Kaneohe District Park is on this

01:20PM 10 particular map?

01:20PM 11 A Yes.

01:20PM 12 Q Could you circle that, please.

01:20PM 13 A (Complying.)

01:20PM 14 Q So you've circled the green, again, sort of rectangle just

01:20PM 15 left of center on that particular exhibit?

01:20PM 16 A Yes.

01:20PM 17 Q So again using the touch screen, could you draw a line to

01:20PM 18 show where that chase went and approximately where you ended

01:20PM 19 the chase on the Kahekili Highway.

01:20PM 20 A (Complying.)

01:20PM 21 Q So you stopped short of the intersection with the Pali

01:20PM 22 Highway, 63 Highway, correct?

01:21PM 23 A Yes.

01:21PM 24 Q The interchange there. Okay.

01:21PM 25 THE COURT: Is that the Pali Highway?

01:21PM 1 MR. INCIONG: I'm sorry.

01:21PM 2 THE WITNESS: The Likelike.

01:21PM 3 MR. INCIONG: Likelike. I'm sorry, Your Honor, 63,

01:21PM 4 not the 61.

01:21PM 5 BY MR. INCIONG:

01:21PM 6 Q So where did you go from that point when -- when you

01:21PM 7 stopped the chase?

01:21PM 8 A We just stopped and went back to -- I believe we went to

01:21PM 9 John's house.

01:21PM 10 Q In Waimanalo?

01:21PM 11 A Yes.

01:21PM 12 Q Did you report back to Mr. Miske that you had not been

01:21PM 13 able to contact Mr. Frasure?

01:21PM 14 A Yes.

01:21PM 15 Q Do you recall if he had any response to that?

01:21PM 16 A No, I don't recall any response.

01:21PM 17 Q All right. I want to fast-forward then, not quite a year

01:21PM 18 later, to September of 2015. Do you recall Mr. Miske summoning

01:21PM 19 you to the Wendy's parking lot -- Wendy's restaurant parking

01:22PM 20 lot near the airport?

01:22PM 21 A Yes.

01:22PM 22 Q Why were you summoned there?

01:22PM 23 A Because Mike bought a car from a guy from the auction.

01:22PM 24 Q Do you recall which auction it was?

01:22PM 25 A The Manheim auction.

01:22PM 1 Q Do you recall what kind of car it was?

01:22PM 2 A I believe it was a Cadillac. It was --

01:22PM 3 Q So Mr. Miske bought a car at the auction, and what -- what

01:22PM 4 happened?

01:22PM 5 A He bought a car from another guy that bought it at the

01:22PM 6 auction.

01:22PM 7 Q I see. So was there any issue with that car?

01:22PM 8 A It was a lemon.

01:22PM 9 Q Meaning it didn't run?

01:22PM 10 A Yes.

01:22PM 11 Q So what was Mr. Miske's response to that?

01:22PM 12 A He was upset.

01:22PM 13 Q Was that car sold as is as you had sold your cars?

01:22PM 14 A Yeah, sold it as is.

01:22PM 15 Q But he -- he wanted something done?

01:22PM 16 A Yes.

01:22PM 17 Q Okay. What did he want?

01:22PM 18 A We met him at the Wendy's parking lot and he wanted us to

01:23PM 19 assault them.

01:23PM 20 Q Why?

01:23PM 21 A Because he got sold -- he bought a lemon from this guy.

01:23PM 22 Q When you say "we," who is -- who is "we"?

01:23PM 23 A Me and John Stancil.

01:23PM 24 Q You were with Mr. Stancil at the time?

01:23PM 25 A Yes.

01:23PM 1 Q How were you contacted by Mr. Miske, if you recall?

01:23PM 2 A Telephone or text.

01:23PM 3 Q Asking you to come to that location?

01:23PM 4 A Yes.

01:23PM 5 Q Prior to coming to the location, did you know why you were
01:23PM 6 going?

01:23PM 7 A Yes.

01:23PM 8 Q Okay, you did. All right. And so once you got there, who
01:23PM 9 was there?

01:23PM 10 A The guy that Mike bought the car from.

01:23PM 11 Q Was Mr. Miske there?

01:23PM 12 A Yes.

01:23PM 13 Q Did you speak with Mr. Miske once you got there?

01:23PM 14 A Yes.

01:23PM 15 Q Was there anything discussed?

01:23PM 16 A Yes.

01:23PM 17 Q What was discussed?

01:23PM 18 A That he would signal us to assault him.

01:23PM 19 Q What was the signal going to be?

01:23PM 20 A I believe it was twitch his nose.

01:23PM 21 Q So you said the guy was there who had sold the car?

01:24PM 22 A Mm-hmm.

01:24PM 23 Q How did you know who he was?

01:24PM 24 A I didn't know who the guy was. Never met him before.

01:24PM 25 Q Did Mr. Miske point him out?

01:24PM 1 A Yes.

01:24PM 2 Q What happened once -- once the seller had arrived?

01:24PM 3 A They was talking and they was getting in an argument.

01:24PM 4 Q And when you say "they," who do you mean?

01:24PM 5 A Mike and the -- the person that bought the car.

01:24PM 6 Q The person that sold the car?

01:24PM 7 A Sold the car, bought the car.

01:24PM 8 Q Okay, got it. How far away from them were you when this

01:24PM 9 argument was taking place?

01:24PM 10 A I was right next to Mike.

01:24PM 11 Q So did -- was the signal ever made?

01:24PM 12 A Yes.

01:24PM 13 Q What happened?

01:24PM 14 A Actually the signal wasn't made. What happened was John

01:24PM 15 got a mixed signal, and then John assaulted and I assaulted him

01:24PM 16 by punching him and kicking him.

01:24PM 17 Q Okay. So who assaulted him first?

01:24PM 18 A John did.

01:24PM 19 Q And what did he do exactly?

01:25PM 20 A Punched him in the face.

01:25PM 21 Q What did you do when you began assaulting him?

01:25PM 22 A Punching him and kicking him.

01:25PM 23 Q How many times did you punch him and kick him?

01:25PM 24 A Three or four times.

01:25PM 25 Q How many times did Mr. Stancil punch him and kick him?

01:25PM 1 A Around the same.

01:25PM 2 Q Did this person ever go to the ground as a result,
01:25PM 3 anything like that?

01:25PM 4 A Yes.

01:25PM 5 Q So they fell down?

01:25PM 6 A Yes.

01:25PM 7 Q Did either of you continue to assault them after they were
01:25PM 8 done?

01:25PM 9 A I assaulted him.

01:25PM 10 Q What was Mr. Miske doing while this assault was taking
01:25PM 11 place?

01:25PM 12 A He was in the back. He didn't do anything.

01:25PM 13 Q Did he ever tell you to stop?

01:25PM 14 A Yes.

01:25PM 15 Q At what point?

01:25PM 16 A When he fell on the ground.

01:25PM 17 Q After he fell on the ground, then what -- did Mr. Miske
01:25PM 18 have any conversation with the -- the person who was being
01:25PM 19 assaulted?

01:25PM 20 A He wanted his money back.

01:25PM 21 Q That's what he told him?

01:25PM 22 A Yes.

01:25PM 23 Q And what -- what words, if you remember?

01:25PM 24 A I don't know word by word. He just said that he wanted
01:25PM 25 his money back.

01:25PM 1 Q Was he asking or demanding?

01:26PM 2 A Demanding.

01:26PM 3 Q Was he saying it nicely or was it an order?

01:26PM 4 A It was an order.

01:26PM 5 Q Was he yelling?

01:26PM 6 A Yes.

01:26PM 7 Q What did the victim say, if any?

01:26PM 8 A "Okay."

01:26PM 9 Q Pardon?

01:26PM 10 A The victim said, "Okay."

01:26PM 11 Q Okay. So what happened then?

01:26PM 12 A Then we left.

01:26PM 13 Q Were there any arrangements made or directions given as to

01:26PM 14 when or how the money should be paid back?

01:26PM 15 A Yes, there was an arrangement to get the money and the car

01:26PM 16 back. But I was in prison at that time when he received the

01:26PM 17 money or picked up the vehicle.

01:26PM 18 Q Did you find out later that Mr. Miske had received the

01:26PM 19 money?

01:26PM 20 A Yes.

01:26PM 21 Q Who did you find that out from?

01:26PM 22 A From Mike.

01:26PM 23 Q He told you the guy had paid him?

01:26PM 24 A Yes.

01:26PM 25 MR. INCIONG: Could we show Mr. Freitas only

01:26PM 1 Exhibit 4-19, please?

01:26PM 2 BY MR. INCIONG:

01:27PM 3 Q Mr. Freitas, do you recognize the individual shown in
01:27PM 4 these two photographs in 4-19?

01:27PM 5 A Yes.

01:27PM 6 Q How do you recognize that person?

01:27PM 7 A The guy -- this was the guy that was at the Wendy's
01:27PM 8 parking lot.

01:27PM 9 Q This is the person that you assaulted --

01:27PM 10 A Yes.

01:27PM 11 Q -- along with Mr. Stancil?

01:27PM 12 A Yes.

01:27PM 13 Q Do these two photos show him as -- as you recall him on
01:27PM 14 that day?

01:27PM 15 A Yes.

01:27PM 16 MR. INCIONG: Your Honor, I would move to admit 4-19.

01:27PM 17 THE COURT: Any objection, Counsel?

01:27PM 18 MR. KENNEDY: No objection.

01:27PM 19 THE COURT: 4-19 is admitted. You may publish.

01:27PM 20 (Exhibit 4-19 was received in evidence.)

01:27PM 21 MR. INCIONG: Thank you, Your Honor.

01:27PM 22 If we could zoom in first on the top photograph,
01:27PM 23 please.

01:27PM 24 BY MR. INCIONG:

01:27PM 25 Q So this is the individual that you and Mr. Stancil

01:27PM 1 assaulted at Mr. Miske's direction?

01:27PM 2 A Yes.

01:27PM 3 Q This was in the Wendy's parking lot?

01:27PM 4 A Yes.

01:27PM 5 Q You said Mr. Stancil punched him in the face, correct?

01:27PM 6 A Yes.

01:27PM 7 Q Did you punch him in the face as well?

01:27PM 8 A Yes.

01:27PM 9 MR. INCIONG: Could we show the lower half of that?

01:27PM 10 BY MR. INCIONG:

01:28PM 11 Q Did you or Mr. Stancil punch him in the mouth or area

01:28PM 12 where he could have sustained injuries to his lips or teeth?

01:28PM 13 A Yes.

01:28PM 14 Q After the assault of this individual --

01:28PM 15 MR. INCIONG: You can take that down. Thank you.

01:28PM 16 BY MR. INCIONG:

01:28PM 17 Q -- were you given anything by Mr. Miske?

01:28PM 18 A No.

01:28PM 19 Q Were you paid any money?

01:28PM 20 A No.

01:28PM 21 Q What was said to you after?

01:28PM 22 A Nothing.

01:28PM 23 Q Thank you?

01:28PM 24 A No.

01:28PM 25 Q Was this unusual, out of the ordinary?

01:28PM 1 A No.

01:28PM 2 Q That's the way Mr. Miske did business?

01:28PM 3 A If he was upset.

01:28PM 4 MR. INCIONG: Let me show Exhibit 4-22 to the witness
01:29PM 5 only, please.

01:29PM 6 BY MR. INCIONG:

01:29PM 7 Q Just to give reference, Mr. Freitas, first of all, do you
01:29PM 8 recognize this part of Honolulu that's shown on the map here?

01:29PM 9 A Yes.

01:29PM 10 Q Does this show -- encompass the area where you assaulted
01:29PM 11 the individual at the Wendy's parking lot?

01:29PM 12 A Yes.

01:29PM 13 MR. INCIONG: Your Honor, I would move to admit 4-22,
01:29PM 14 please.

01:29PM 15 THE COURT: Any objection?

01:29PM 16 MR. KENNEDY: No objection.

01:29PM 17 THE COURT: 4-22 is admitted without objection. You
01:29PM 18 may publish.

01:29PM 19 (Exhibit 4-22 was received in evidence.)

01:29PM 20 MR. INCIONG: Thank you, Your Honor.

01:29PM 21 BY MR. INCIONG:

01:29PM 22 Q So does -- does this show the area near the airport,
01:29PM 23 Mr. Freitas?

01:29PM 24 A Yes.

01:29PM 25 Q Could you circle where the Wendy's restaurant is that you

01:29PM 1 assaulted the victim.

01:29PM 2 A (Complying.)

01:29PM 3 Q Okay, great. Thank you.

01:29PM 4 MR. INCIONG: Could we show Mr. Freitas 4-27, please?

01:29PM 5 BY MR. INCIONG:

01:29PM 6 Q Do you recognize that photo, Mr. Freitas?

01:29PM 7 A Yes.

01:29PM 8 Q Does that show the Wendy's restaurant that you were at
01:30PM 9 where that assault was committed?

01:30PM 10 A Yes.

01:30PM 11 Q Does that accurately show it as -- as you recall it on
01:30PM 12 that day?

01:30PM 13 A Yes.

01:30PM 14 MR. INCIONG: Your Honor, I would move to admit 4-27.

01:30PM 15 THE COURT: Mr. Kennedy, any objection?

01:30PM 16 MR. KENNEDY: No objection.

01:30PM 17 THE COURT: Without objection, 4-267 is admitted.

01:30PM 18 And we're getting to the end of the trial day,

01:30PM 19 Mr. Inciong, so please keep that in mind as you finish up.

01:30PM 20 MR. INCIONG: Your Honor, I just have three quick
01:30PM 21 photos that I will introduce, and we can end there, if that's
01:30PM 22 okay.

01:30PM 23 THE COURT: That's fine.

01:30PM 24 BY MR. INCIONG:

01:30PM 25 Q So this is the Wendy's restaurant, correct, Mr. Freitas?

01:30PM 1 A Yes.

01:30PM 2 MR. INCIONG: All right. So if we could show

01:30PM 3 Mr. Freitas only three photos beginning with Exhibit 4-28.

01:30PM 4 BY MR. INCIONG:

01:30PM 5 Q Do you recognize what's shown in that photograph,

01:30PM 6 Mr. Freitas?

01:30PM 7 A Yes.

01:30PM 8 Q How do you recognize that?

01:30PM 9 A This is where we assaulted him.

01:30PM 10 Q Is that the parking lot of the Wendy's?

01:30PM 11 A Yes.

01:30PM 12 Q Does that photo accurately show that area where the

01:30PM 13 assault occurred?

01:30PM 14 A Yes.

01:30PM 15 MR. INCIONG: Okay. Could we show Mr. Freitas now

01:30PM 16 4-29, please?

01:30PM 17 BY MR. INCIONG:

01:31PM 18 Q Do you recognize that photo?

01:31PM 19 A Yes.

01:31PM 20 Q Is that that same area?

01:31PM 21 A Yes.

01:31PM 22 Q Do you recognize that as accurately showing that area, the

01:31PM 23 parking lot of the Wendy's restaurant?

01:31PM 24 A Yes.

01:31PM 25 MR. INCIONG: And then finally, 4-30, please.

01:31PM 1 BY MR. INCIONG:

01:31PM 2 Q Is this just another angle of that same part of the
01:31PM 3 parking lot?

01:31PM 4 A Yes.

01:31PM 5 Q Does that accurately show the area where the assault
01:31PM 6 occurred?

01:31PM 7 A Yes.

01:31PM 8 MR. INCIONG: Your Honor, I would move to admit
01:31PM 9 Exhibits 4-28, 4-29 and 4-30.

01:31PM 10 THE COURT: Mr. Kennedy, any objection to any of these
01:31PM 11 three exhibits?

01:31PM 12 MR. KENNEDY: No objection to 4-28, 4-29 and 4-30,
01:31PM 13 Your Honor.

01:31PM 14 THE COURT: All right. Then all three should come in
01:31PM 15 without objection, 4-28, 4-29 and 4-30. You may publish all of
01:31PM 16 them.

01:31PM 17 (Exhibits 4-28, 4-29 and 4-30 were received in evidence.)

01:31PM 18 MR. INCIONG: Thank you, Your Honor.

01:31PM 19 BY MR. INCIONG:

01:31PM 20 Q So starting with 4-30, this shows the parking lot where
01:31PM 21 the -- the meeting took place?

01:31PM 22 A Yes.

01:31PM 23 Q And where you and Mr. Stancil assaulted the victim at
01:31PM 24 Mr. Miske's direction?

01:31PM 25 A Yes.

01:32PM 1 Q 4-29, please. That's just another angle of that same

01:32PM 2 area, correct --

01:32PM 3 A Yes.

01:32PM 4 Q -- where the assault occurred?

01:32PM 5 And then finally 4-28. Again, this is a wider view or

01:32PM 6 different angle of that same part of the parking lot?

01:32PM 7 A Yes.

01:32PM 8 Q After the assault was finished, the victim left the area?

01:32PM 9 A Yes.

01:32PM 10 Q Where did you go, if you recall?

01:32PM 11 A I don't recall where we went. Went back into town.

01:32PM 12 MR. INCIONG: All right. Your Honor, I can conclude

01:32PM 13 at that point.

01:32PM 14 THE COURT: All right. As we break for the trial day

01:32PM 15 then, I'll remind our jurors as I always do to please refrain

16 from discussing the substance of this case with anyone,

17 including each other, until I advise you otherwise; to refrain

18 from accessing any media or other accounts of this case that

19 may be out there; and finally, please do not conduct any

20 independent investigation into the facts, circumstances or

21 persons involved.

01:32PM 22 We will see you tomorrow at 8:30 where we will resume

01:33PM 23 the examination of Mr. Freitas.

01:33PM 24 (Proceedings were concluded at 1:33 p.m.)

25

1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, June 3, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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